CALIFORNIA

STATE LIBRARY

Call No. C 333 C 153
8

Copy No......

SAM'L H. RICH

Carries a Full and Complete Line of

Watches, Diamonds and Jewelry

48 SOUTH FIRST STREET, - - - SAN JOSE.

S. E. SMITH IMPORTER AND MANUFACTURER OF

Men's Furnishing Goods,

UNDERWEAR, NECKWEAR, DRIVING GLOVES, ETC.
SHIRTS MADE TO ORDER A SPECIALTY.

No. 10 South First Street, - - - SAN JOSE, CAL.

PARTIAL LIST

. . OF . .

Santa Clara County Lands

FOR SALE BY

WESTERN LAND CO.,

C. M. ARNOLD, Manager,

640 MARKET STREET, - - SAN FRANCISCO.

WE SELL

H|A|R|D|W|A|R|E

CHERRIE & CO.,

27 SOUTH FIRST STREET, - - SAN JOSE, CAL.

CALIFORNIA STATE LIBRARY

JUN 1916

CALIFORNIA
STATE LIBRARY

C 333
C153
8

9086

Facts About Santa Clara Co., California.

The Largest Fruit Producing County in the World.

Santa Clara County is on the southern arm of San Francisco Bay. San Jose, the County seat, is 48 miles from San Francisco, with which city it is connected by three lines of railroads, as well as by water transportation via the bay. A line of railroad connects with the sea coast, and one southerly will, in a few months, be the main transcontinental route for California. Population of county, 60,000; of San Jose, 25,000. Assessed value of property, $54,812,087. Rate of county tax, 71.6. Value of County buildings, $800,000. It is the location of the State Normal School, and State Hospital for the insane. The Lick Observatory, with the largest telescope in the world, is here. It has the best public roads in the Union, over 100 miles of which are sprinkled and are free from dust in summer and mud in winter. It is famous for its productive orchards and vineyards. Average net income from orchards, $150 per acre. Fruit shipments last year, 58,942,020 lbs. Value of fruit crop of 1893, $6,500,000. The fruit crop alone pays over ten per cent. of the entire assessed valuation of Santa Clara county. Cost of fruit lands, $50 to $300 per acre. Increase in value from time of planting, $50 per acre per year for 10 years. The great Santa Clara Valley extends through its entire length, and mountain ranges protect it from the fogs of the ocean and hot winds of the interior. Lowest range of thermometer, 38 degrees; highest, 90 degrees. Water supply from the pure mountain streams. Artesian wells numerous and of great capacity. Value of public school property, $525,000. Annual expenditure for public schools, $250,000. It has the Leland Stanford Jr. University, Santa Clara College, and University of Pacific. It has the largest seed farms and the largest herds of thoroughbred cattle in America. It has a Central Fruit Exchange and Co-operative Fruit Curing Associations in principal districts. Sufficient rain falls to insure good crops without irrigation; over 300 clear days in the year. Paid-up bank. capital, $3,000,000; Deposits, $5,500,000. The County has the most productive quicksilver mine in America. Gas and electricity are used for lighting. Electric railroads on principal streets of San Jose. Miles of main sewer in San Jose, 40. Sprinkled roads, 150 miles. Extensive free public library. Numerous fine church buildings of all denominations. The best hotels on the Coast. For further particulars, address

Term Land Co. San Francisco Co., Cal.
640 Market St
Land Agent.

LIST OF PROPERTY FOR SALE.

AT PORT ALVISO—On the arm of the San Francisco Bay, 9 miles from San Jose, large brick warehouse 180x80; concrete floor, iron doors, about 75 feet water front; as fine a warehouse as there is in the

182466

State, cost $20,000 to build, offered very cheap. $10,000. Will trade for Oakland, Alameda, San Francisco, San Jose, or good farming land. 86

10 ACRES.—Ten minutes drive from San Jose on one of the nicest roads in the valley. Prunes, cots and peaches are the trees, all bearing. House, barn, etc. $7,000. 88

10 ACRES.—In bearing prunes and apricots principally; only a short distance out; trees 8 years old; prime condition; irrigating plant. $7,000. Will take in exchange house and lot to value of $4,000. 89

6½ ACRES—In the Willows in bearing prunes and cherries; nice cottage of 7 rooms; barn, etc.; finely located. $9,000. 90

11 ACRES—In prunes except about 300 trees, part in bearing; on good road 1½ miles out. Will exchange for Pasadena or Los Angeles property. $4,000. 91

9 ACRES—Of cherries, 400; cots, 165; peaches, 200; all bearing and in prime condition; city water; house of 7 rooms, barn, etc. $10,000. 92

102 ACRES.—Large modern house of 11 rooms; windmill and tank; 500 apricot trees; 2,000 prunes; 150 Bartlett pears; 100 Winter Nellis pears; 150 early Crawford peaches; 150 late Crawford peaches; 80 egg plums; 45 cherry; 600 almond; 300 silver prunes; 10,600 Zinfandel vines; 5,400 Matero; 4,500 Burgundy. $425 per acre. 93

7 ACRES—On McLaughlin Avenue adjoining city; 700 prunes; 200 peach; 5 cots; nice two-story house, barn, windmill, etc. $10,000. 94

8½ ACRES.—One mile from Los Gatos; small house 2 rooms; barn; 7 acres in trees—prunes and cots—8 years old; spring, etc. A nice little home. $3500. 95.

42 ACRES.—Near San Jose; deep loam soil; 2 acres French prunes; modern house 7 rooms; bath closets; carriage house and barn; well, windmill and tank-house. $15,000. 96.

22 ACRES.—Sediment soil; ⅔ in bearing prunes, cherries, peaches, cots; flowing well. $15,000. 61.

40 ACRES.—In the Santa Cruz Mts., near Hotel de Redwood; 5 acres bearing trees; house 7 rooms; springs. $3500 97.

10 ACRES—Near town; 150 pears, 108 cots, 66 prunes, 100 peach, 10 apples, all bearing; 525 prunes two years; grapes, Verdel and Muscat; house of 4 rooms, barn, well, farming implements go with place. 58

LIST OF PROPERTY. 5

140 ACRES.—Rolling land; 4 miles from San Jose; 284 peach, 275 English walnut, 1160 cots—Royal—4750 prunes; all bearing and in prime condition. $350 per acre. 99.

26½ ACRES.—Orchard; 14 acres in prunes, 3 acres cots, 4½ acres peaches; house, barn, windmill, etc., farming implements, trays, etc. $21,000. 100.

6¼ ACRES.—Adjoining town of Los Gatos in Davis Tract; 100 prunes-200 cots, 150 peach, 75 Silver prunes; small barn; old house, wind, mill and tank. $4,000; 101.

240 ACRES.—Four miles from Soledad, Monterey Co., 1 mile from railroad and river; 30 acres in orchard and vineyard; good house, barn, spring; water piped to house; land part level and part rolling; 5 acres blue gum; grove; will exchange for city property. 102.

160 ACRES.—In the Santa Cruz Mountains ½ mile from Wrights; 2500 table grapes; 125 trees variety 4 years old; running water; 5 acres cleared. $3800. 103.

125 ACRES.—Near San Jose; 50 acres peach, Newhall, Crawford and Lemon and Orange cling; 25 cots, Royal, Blenhiene and Hemskirk; 10,500 trees; 11 acres vines; balance hay land; some few orange trees, lemon trees; house 6 rooms; barn, etc. $60,000. 104.

20 ACRES.—On Saratoga avenue in prunes, cots, and peaches; no buildings; trees 4 years old. $10,000. 105.

25 ACRES.—On the Boyten road; 225 cherry—Black Tartarian and Gov. Wood; 600 prunes, 300 cots, 250 peach, 3 acres young prunes 3 years, 6 acres hay, large barn, windmill and tank-house; very cheap. $425 per acre. 106.

5 and 10 ACRE LOTS.—In Emerson Tract; very choice tract handsomely located and in pleasant driving distance of Stanford University; A 1 fruit land; ¼ cash, balance time to suit. $200 per acre. 107.

10 ACRES.—In orchard; elegant large house of 14 rooms; modern windmill; tank and tank-house, barn, etc.; on electric car line and only 15 minutes out. $14,000. 98.

30 ACRES in vines; ½ set with prunes 2 years old; very cheap; land alone worth the money; near Mt. View. Only $6500. 108.

25 ACRES—Of orchard, prunes, cots and peaches; A 1 location, near town and in a sightly location, as fine as there is. $600 per acre. 62

5 and 10-ACRE TRACTS—In the Johnston Tract; close in and on good road. $200 per acre—½ cash, balance time to suit. 69

30 ACRES—Near San Jose; in prunes, ⅔ in cots and peaches; one of the finest bearing orchards in the county; near school; elegant view; a valuable irrigating privilege goes with place. $600 per acre. 63

HOVER TRACT.—One of the choicest pieces of fruit land in Santa Clara County; 10-acre lots from $175 to $200 per acre; terms ⅓ cash, balance time to suit at 8 per cent. 64

6.23 ACRES—In the Willows; nice cottage, barn, etc.; 300 prunes, 100 cherry and 150 cots; only 1½ miles from San Jose. $6,500—$3,500 cash, balance time to suit; very choice orchard. 65

160 ACRES—Two miles from Los Gatos, in the mountains; small cabin, barn, living springs, 5 acres in prunes, peaches, cots; 4 acres vineyard—Zinfandel. Can cultivate ½; 500 cords timber. Price $6000. 66

20 ACRES—Of good fruit land in a good neighborhood, close to schools and postoffice. $180 yer acre. 68

40 ACRES—Near depot and express office, good for prunes, cherries or apricots; deep, dark, gravelly loam. $200 per acre. 67

11.64 ACRES—Two miles from Saratoga; new house of 7 rooms, good barn, 500 3-year-old prunes, balance apricots and cherries 8 years old; windmill, tank and tank-house. Will exchange. Price $6,500. 79

120 ACRES—Heavily wooded in Santa Cruz Mountains on Stevens Creek; cabin of 2 rooms; will exchange. Price $1,200, ½ cash, balance on time. 78

7 ACRES—Two miles out from Santa Clara; road sprinkled every day during summer months; all in fruit; nice cottage, 5 rooms, fruit house, windmill and tank-house, barn, etc. $6,500. 77

55.41 ACRES—About 1½ miles from the celebrated Quito Olive Farm; 18 acres in grapes, Tokay and Muscat; 100 prunes, 4 years; 750 almonds, 4 years; very cheap: $155 per acre. $3,000 can remain on mortgage. 76

160 ACRES—Near Saratoga in the hills; house of 4 rooms, cloth and papered; small barn; 25 acres cleared, 10 acres in vines, Zinfandel, 1½ acres orchard; 80 acres can be cultivated, balance wooded. Price $60 per acre, ½ cash. 75

34½ ACRES—Adjoining Santa Clara; very fine land; nice house of 9 rooms, good barn, windmill and tank-house, small family orchard and vineyard; very cheap. $10,500, terms easy. 74

40 ACRES—In city limits of Santa Clara of A No. 1 land; flowing well; good vegetable or berry land, or for anything you plant. $250 per acre, worth $380. 73

Money to Loan—See J. E. FISHER.

35 ACRES—On the Saratoga Road in Silver and French prunes 6 years old. $450 per acre, very cheap. 72

3 ACRES—Of land on Saratoga Avenue near Saratoga; business property consisting of two stores, dwelling, feed barn, etc. $8,000. 71

79 ACRES—Of A No. 1 fruit land, close in; soil deep, dark, gravelly loam; small buildings; 8 acres in vineyard; very choice location. Price, $200 per acre. 70

43 ACRES—Fine, rich, dark loam adjoining city limits of San Jose; 35 acres bearing prunes, apricots and peaches, 10 acres 1-year-old prunes; a beautiful lake supplied by artesian wells; house of 6 rooms, good barn and outbuildings; a property that will cut into city lots in a few years. Price, $25,000. Terms easy. 81

10 ACRES—In bearing French prunes, near depot, express office and post office; fine, large flowing well; very cheap. $5,000. 80

20 ACRES—Near Lawrence Station, only 3 miles from Santa Clara; 12 acres French prunes 2 years old; excellent location and very cheap. $5000. 82

1000 ACRES—Stock ranch, all fenced; good house, barn and out-buildings, nice orchard and vineyard; 300 acres good land for any purpose; fine stream running water; springs—1 mineral owner refused $4,000 for; will put in large number of cattle, hogs, horses and mules if desired at bed rock prices. Owner is sick and must sell. Will take part in exchange. $15,000. 41

10 ACRES—Near San Jose in the Stone tract, 3-5 prunes 5 years old; balance peaches and cots. Will exchange for San Jose property. $5,000. 3

21½ ACRES—In 9-year-old vineyard, close to winery and town; very finely located and a good paying property. Will sell in 5 or 10 acre lots. $325 per acre. 2

358 ACRES—66 acres level land and as good as the best; 292 acres rolling land about 150 under cultivation, balance pasture; would make an elegant stock or horse farm. Only 8 miles from San Jose and near railroad. Terms easy. $25,000. 1

10 ACRES—In 1-year-old prunes, 3-5 prune, 1-5 peach and 1-5 cherries; nice location, c[illegible] to town. $2,700. 32

40 ACRES—In 1-year-old trees; 3,000 prunes, 900 cling peaches, 900 cherry. Price $10,000. A good thing. 33

50 ACRES—Near Saratoga Avenue, 2,900 prunes, 1,325 apricots; large barn, well, tank-house; $1,500 worth of personal property goes with place. Paid this year $14,000. $35,000. 34

Insure with Insurance Co. of North America, J. E. Fisher, Agent.

Money to Loan—See J. E. FISHER.

16 ACRES—5 acres bearing prunes, 5 acres in bearing peaches, 5 acres in 1-year-old prunes, small home vineyard; house of 5 rooms, barn, windmill and tank; near depot and post office. $6,500. 35

10 ACRES—In 1-year-old cherries, in best of location; only $275 per acre. Also 10 acres of 1-year old prunes for $275 per acre. Both are bargains. 36

10 ACRES—In 4-year-old prunes, two miles out, very fine location; small house, barn and windmill. $4,500. 37

4 ACRES—4-year-old prunes, short distance out of San Jose on Stevens Creek Road. $2,000. 38

5 ACRES—Of choice land set in prunes, 350 in peaches, 150 are 3 years old; small two-roomed house. Price $465 per acre. 39

13½ ACRES—Just out of town in prunes, cots and cherries, all 9 years old; large house, 11 rooms, 6 bay windows, 16 water faucets in and about place; large water tanks. A very fine home. $18,000. Terms ½ cash. 40

10 ACRES.—Of fruit or vegetable land adjoining city of San Jose. Get it quick; it won't last. $2000. 42.

42 ACRES.—Near Campbell in prunes, cherries and cots, 9 years old; the finest in the valley; nice modern house 10 rooms; fruit houses, barn, etc. $33,500. Place paid this year $7500. 43.

9.22 ACRES.—Near Campbell; in prunes 400, peaches 200, cots 150, 6 cherry; small house; very low $3600. Will trade. 44.

15 ACRES.—On the San Francisco road; small house and barn; 4 acres muscat grapes, 1 acre Tokay, 7 acres trees—peaches. $275 per acre. 45.

40 ACRES.—In prunes, peaches and cots; nice buildings, and just at the edge of the city; a very elegant home; flowing wells. $25,000. 46.

185 ACRES.——On Bodfish road about 7 miles from Gilroy; house 7 rooms, barn; 23 acres in vines, 2000 muscat, 6000 Zinfandel, 1000 Mission and balance Charbono; 5 acres mixed orchard 7 years old; 105 acres level, 80 acres black oak. Very low price $10,500; ½ cash. 48.

15 ACRES.—Two years old; 1200 prunes, 400 peaches; only 2 miles out; splendid soil; fine road. $4500; $2000 cash, balance time. 47.

9½ ACRES.—In 1 year old peach trees near Milliken's Corner. $2100. 49.

40 ACRES.—Dairy land; flowing water; part in alfalfa. $150 per acre. 50.

J. E. FISHER, Notary Public and Conveyancer.

Money to Loan—See J. E. FISHER.

80 ACRES black land; flowing water; near railroad; hay, grain or alfalfa land. Price $8000. 51.

155 ACRES.—Vegetable or alfalfa land near railroad; flowing wells; all can be irrigated; house, barn, etc. Price $145 per acre. 52.

2 ACRES of land in the Willows; house has 7 rooms, hard finished; small orchard. $3500. 53.

60 ACRES.—Orchard; the best there is, 2½ miles out; can all be irrigated; in bearing prunes, apricots, and peaches; paid this year 52 per cent. on price asked; small buildings; $600 per acre; $6000 cash, balance at 7 per cent. 54.

87 ACRES.—On Alviso road; fine dairy; vegetable or berry land; 3 artesian wells, large house; 5 acres asparagus; 60 acres rye grass, 10 acres pears; large barn and out building. $22,000. 55.

30 ACRES.—In a choice fruit belt; ⅔ prunes, ⅓ peaches—100 Lemon cling, 100 Newhall, 250 Sellers cling, 200 Salway and Crawfords; will sell half. $525 per acre. 15

10½ ACRES.—In apricots; fine large trees and very close in. $10,000. 16

15 ACRES.—Near Los Gatos; 1½ acres bearing prunes, 7 acres 3 yr prunes, 6½ acres 2 yr prunes; house 7 rooms, new and modern. $9000. 17

50 ACRES.—Orchard; A No. 1 location; 25 acres prunes, 4 acres Silver prunes, 6 acres cots, 7 acres apples, 9 acres pears, 1 acre cherries; paid this year $9000; old house, good barn, windmill, tank and drying plant. ½ cash. 18

14.37 ACRES.—Five miles out; 600 bearing prunes, a few cots, balance in young prunes; nice cottage, barn, etc.; terms easy. $5000. 19

14¼ ACRES.—Orchard bearing near San Jose; 5½ acres prunes, 8½ acres cots; very choice; ½ cash. $8000. 20

10 ACRES.—3½ miles from San Jose; 5 acres prunes, 5 acres cots, all 7 years; new house 7 rooms, barn, windmill, tank, etc.; will exchange for larger orchard or land. 21

11.88 ACRES.—Near Saratoga; all rolling land; 700 prunes 2 years; spring; $1300 cash, balance mortgage. $1900. 23

10 ACRES.—All vines except 2½ acres of apricots; neat cottage, barn, etc; close to town; will exchange for mountain ranch. $4000. 22

10 ACRES.—Orchard 5 years old; 11 acres in prunes, 7 acres in cots and peaches; small house, barn, etc. 24

Insure in the Old Time Atlas, J. E. FISHER, Agent.

10 ACRES.—Near Campbell, in prunes, 24 feet apart, set in center with peaches 4 years old. $4000. 25

5 ACRES.—In peaches near Lawrence Station; nice land; trees thrifty and 3 years old. $2000. 26

20¾ ACRES.—In the Singleton Tract; 1400 prunes 4 and 5 years old, 400 peaches, Salways, 400 cots; house 4 rooms, well, barn, etc.; $5000 can remain on mortgage 4½ years at 8 per cent. Price $11,000. 27

30 ACRES.—18 acres orchard—bearing 1300 prunes, 300 cherry, 5 acres table grapes, 7 acres wine grapes; house, barn, windmill. $500 per acre. 28

30 ACRES.—In 1 year prunes 3-5, in cherries, 1-5, and peaches 1-5; 20 minutes drive from town; very desirable. $260 per acre. Terms easy. 30

60 ACRES.—Forty acres in wine grapes—Zinfandel, Charbono and Matero; 18 acres in orchard; 300 cherry, 1350 French prunes; 5 acres table grapes; house 6 rooms, large barn; only $400 per acre; will exchange for income property. 29

20 ACRES.—In prunes 2-5, in cherries 1-5, and peaches 1-5; only 2 miles from Santa Clara. $260 per acre. 31

90 ACRE—Orchard; 3 miles out; prunes, apricots, peaches, pears, plums and cherries; dwelling, barn, well, windmill, 5000 gal. tank, fruit cutting house, fruit store house; all other conveniences for handling fruit. $59.3000. Terms easy. 87

30 ACRES—Of cherry land or A1 for prunes or cots. Very fine. $5,500. 85

20 ACRES—A No. 1 fruit soil. Just the best there is for $3,700. 84

10 ACRES—A No. fruit land, near railroad. $1,900. 83

103 ACRES—Rolling land, fine hay, grain or fruit land. Will sell on very easy terms. $10,300. 4

320 ACRES—Four miles north of Bradley, Monterey County. Will sell or exchange for San Jose property. $4,000. 5

65 ACRES—Near Saratoga, rolling land; 45 acres in trees, all prunes except 500 peach; 2,000 trees 4 years old, balance 6 to 11 years old; house of 4 rooms, barn, etc. Will take San Jose property for part payment and mortgage for balance. Price $20,000. 7

160 ACRES—Of land two miles north of Saratoga; house of 14 rooms, barn and outbuildings; 6 acres orchard and vineyard; 110 acres hay land, balance wooded. $15,000. Will exhange. 6

Money to Loan—See J. E. FISHER.

16⅔ ACRES—In Mt. Eden Tract two miles from Saratoga, in the hills; 12 acres in bearing; 7 acres apples, 2 acres peaches, 1 acre prunes, 1 acre apricots, balance in cherries, pears, figs and oranges; 5 roomed cottage, well and two pumps, barn, etc. $4,250. $2,500 cash, balance time. 8

800 ACRES—Near King's City, 500 acres farming land; good farm buildings, barns, two windmills; produced 20 sacks per acre this year. Will exchange for Santa Clara County property. Price $25 per acre. 9

400 TO 800 ACRES—In Tulare County 6 miles west of Tipton, 10 from Tulare Lake; in artesian well belt; all fenced in lots to suit. $20 per acre or will exchange for Santa Clara County property. 10

40 ACRES—In the warm belt: 15 acres prunes, 5 acres bearing; 5 acres cots and peaches; 20 acres wine grapes, Charbono, Matero and Zinfandel; house, barn, etc. $500 per acre. 11

215 ACRES—Near Milpitas, 80 acres cultivated; 150 acres can be plowed; 5 acres orchard, mostly peaches; house 5 rooms, barn, etc. Will exchange for orchard or orchard land in valley. 12

20 ACRES—Prunes 8 years old; nice cottage, barn, etc. Will pay 20 per cent on asking price. $16,000. 13

10 ACRES—Of solid prunes 8 years old. Very fine location and A No 1 trees. $7,500. 14

10 AND 20 ACRE Tracts near town in the Smith Tract. $300 per acre. In a very fine location. 56

55¼ ACRES.—Garden land; will raise corn, melons, lemons and oranges; 3000 pear trees, 1200 peach trees—bearing, 100,000 nursery trees 2 years; 45 acres cleared land, water piped to house and barn; house 10 rooms; hot and cold water; patent closets and bath; good barn; on County road: 2 miles from railroad, Santa Cruz Co. $6300 is the price; nursery reserved. 57

31.18 ACRES.—Near the thriving town of Los Gatos; very low. $115 per acre; must be sold. 18

80 ACRES.—Orchard; 5 miles out; 700 olives 4 years, 450 walnuts 6 years, 35 acres French prunes 6 years, 5 acres peach 6 years. 8 acres prunes 4 years, 4½ acres prunes 1 year, 4 acres grapes set in with peaches and prunes 1 year old; small house, barn, etc. $450 per acre.

280 ACRES—Hill land near Eden Vale; 100 acres hay land, balance pasture. $40 per acre. 109

D'Ablaing Tract.

We have three ten acre pieces left in this fine tract of fruit land

Insure in the Old Time Atlas, J. E. FISHER, Agent.

which we offer at two hundred and twenty-five ($225) dollars per acre. The land is immediately adjoining the Willows orchard district and is first class fruit land. Terms one-half cash, balance two or three years' time. 110

57¼ ACRES.—Of land situated on southeast corner of Bubb or Prospect road and Mountain View and Saratoga roads, opposite the Lincoln school-house: 13½ acres apricots, 12 acres French prunes, 4 acres peaches, 3 acres cherries, 6 acres pears, 15 acres vines, 6 acres of which are Muscat, 3 acres Malvoise, balance wine grapes. Trees and vines all set out 11 years ago, but about 600 trees, mostly prunes, all in excellent condition. Place has produced an average of over 200 tons of frnit for the past 3 years; there is a fair house, also house for hired men, fine barn, good well, mill and tank, also the following described personal property: eleven hundred fruit boxes, two hundred and fifty drying trays, eight fruit baskets, esght pruning saws, eight pairs pruning shears, three pairs of large pruning shears, eleven fruit ladders, one express wagon, one heavy fruit wagon, one light buggy, one orchard truck, one disc cultivator, two steel cultivators, three sets work harness, one set double buggy harness, five plows, several sets double trees and single trees, forks, hoes, picks, etc., one spray pump with hose, work-bench, all kinds of tools for doing carpenter and blicksmith work. One cross cut saw, three axes, one lawn mower, one jewel gasoline stove, one sulphuring box, one furnace, one kettle for dipping prunes, one grindstone and many other useful implements to be used on the place. Price $350 per acre. Terms $10,000 cash, balance on mortgage, three or four years at eight per cent. 111

35 ACRES.—In prunes; elegantly located between Saratoga and Los Gatos; 8 miles from San Jose; good house 8 rooms, barn, etc. Price $18,000. 116

222 ACRES.—Eight miles from San Jose; 50 acres level land, balance rolling; 70 acres in fruit 2 yrs old; 60 acres prunes, 10 acres cherries; nice cottage, barn, etc; spring, and running water; could be made an ideal home; beautiful view. $2800. 112

160 ACRES.—Grain land in Yolo Co.; A No. 1; good for fruit or vine. $8000. 113

7.75 ACRES.—1½ miles out; all prunes, bearing; trays; farming implements, house, barn, etc. in Stone Tract. 114

960 ACRES,—1½ miles from Gilroy; 300 acres valley land, balance hill and pasture land; hill heavily wooded with oak, Madrone; large live oak trees grow in abundance over the ranch; house 12 rooms; 30 to 40 acres in bearing orchard and vineyard; pears, peaches, prunes; quite a number of out-buildings; 2 streams run through ranch; there is a soft sand stone quarry and many thousand cords of wood. Price $50,000. 115

+ + BUY OUR + +

SHOES

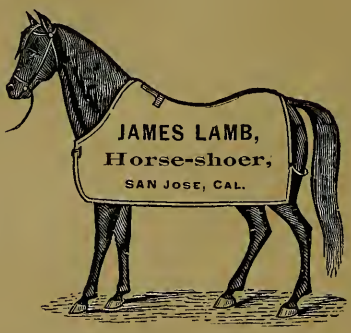
We are ahead on Shoes
Guarantee Every Pair
Money back if they don't wear satisfactory.

Men's, Boys' and Children's only.
We have dozens where others have pairs,

L. W. Springer Son
San Jose, Cal.

Keep Your Horses Well Shod

First-class Work at Reasonable Rates



Particular Attention given to Horses' Feet

SATISFACTION GUARANTEED.

Nos. 19 and 21 South San Pedro St.

TELEPHONE 227.

RECLAMATION AND

DRAINAGE ASSOCIATION

Organized May 6, 1902, at Sacramento, California.

FRANK MILLER, of Sacramento,	- - -	President.
GEO. F. McNOBLE, of Stockton,	- - -	Vice-President.
T. H. SULLENGER, of Grimes,	- - -	Secretary.

AT a mass-meeting of people interested in swamp lands, held at Sacramento, May 6, 1902, it was voted to form the

RECLAMATION AND DRAINAGE ASSOCIATION,

and the following were elected for said purpose with full power:

FRANK MILLER, of Sacramento	President.
GEO. F. McNOBLE, of Stockton	Vice-President.
T. H. SULLENGER, of Grimes	Secretary.

GENERAL COMMITTEE.

1. J. W. BROWNING	Grand Island		Colusa County.
2. JOHN COUGHLAN	Sycamore		Colusa County.
3. JOHN HART	Cranmore		Sutter County.
4. E. POFFENBERGER	Cranmore		Sutter County.
5. L. TARKE	West Butte		Sutter County.
6. A. C. BINGHAM	Marysville		Yuba County.
7. G. W. CHAPMAN	Winters		Yolo County.
8. B. G. PEART	Grafton		Yolo County.
9. P. J. VAN LOBEN SELS	1111 Washington St.,	Oakland	Alameda County.
10. F. F. RYER	San Francisco		Pacific Union Club.
11. B. ETTLINGER	San Francisco		311 California Street.
12. FRED W. ZEILE	San Francisco		Mercantile Trust Co.
13. A. T. J. REYNOLDS	Walnut Grove		Sacramento County.
14. PETER COOK	Rio Vista		Solano County.
15. A. L. SHINN	Sacramento		Sacramento County.
16. J. H. GLIDE, JR.	Box 456, Sacramento		Sacramento County.
17. J. P. SARGENT	Lodi		San Joaquin County.
18. W. B. MATTHEWS	French Camp		San Joaquin County.
19. JOHN N. WOODS	Stockton		San Joaquin County.
20. B. F. ROLERSON	Stockton		San Joaquin County.
21. E. L. WILHOIT	Stockton		San Joaquin County.
22. W. C. WHITE	Stockton		San Joaquin County.
23. GEO. F. McNOBLE	Stockton		San Joaquin County.
24. FRED H. HARVEY	Galt		Sacramento County.

The Executive Committee is composed of Messrs. McNoble, Van Loben Sels, Tarke, Glide, Peart, and Harvey; its first meeting will be held in Sacramento, on June 16, 1902, at 11:30, at Mr. Shinn's office.

Communications may be addressed to any member of the Executive Committee. All communications intended for the consideration of the General Committee must be made in printing, or by typewriting, so that a copy can be mailed to each member of the General Committee. These communications will not be published, except by order of the Executive Committee.

TABULATION OF COMPLETED SWAMP LAND DISTRICTS OF CALIFORNIA, SHOWING NUMBER, LOCATION, AREA, AND DATE OF ORGANIZATION.

Districts Organized Under Act of March 28th, 1868, and Completed.

Compiled under the direction of the Commissioner of Public Works in 1894.

No.	County.	Area, in Acres.	No.	County.	Area, in Acres.
1	Sutter	50,560.00	165	Contra Costa	321.38
3	Sacramento	17,369.00	169	San Joaquin	756.49
5	Sutter	98,518.72	175	Sacramento	1,934.56
9	Solano	1,925.00	176	Contra Costa	827.62
10	"	1,228.50	183	" "	2,107.00
41	"	11,879.00	187	Solano	1,481.40
57	San Joaquin	3,803.29	188	"	486.58
58	" "	2,300.00	189	San Joaquin	835.39
61	" "	3,954.00	196	Solano	2,080.00
63	" "	1,920.00	205	Sacramento	7,483.16
67	Colusa	5,640.00	210	San Joaquin	1,008.37
70	Sutter	8,560.00	218	Solano	7,573.50
71	Sacramento	3,477.00	221	San Joaquin	10,698.82
72	San Joaquin	6,953.59	223	" "	52,700.00
73	Sacramento	174.64	225	Sutter, Colusa	7,320.96
74	"	525.00	256	Solano	1,666.95
76	"	1,967.39	258	"	19,544.14
84	Solano	5,198.23	275	Colusa	120.00
89	Sacramento	1,123.00	276	Solano	1,618.52
90	Colusa	600.00	294	"	27,122.58
91	"	9,475.00	313	"	2,363.57
92	"	960.00	319	San Joaquin	550.00
93	Colusa, Glenn	23,440.00	331	Solano	805.20
94	Colusa	1,640.00	335	Colusa	680.00
104	Solano	1,117.81	336	"	3,160.00
105	"	12,056.86	337	San Joaquin	5,817.00
107	Contra Costa	21,000.00	349	Sacramento	2,450.45
108	Yolo, Colusa	74,085.87	351	Solano	340.42
117	Sacramento	3,608.56	363	"	351.76
123	Solano	876.00	364	Sacramento	1,730.77
124	Colusa	2,060.00	390	Colusa	360.00
126	Solano	994.96	403	San Joaquin	1,576.34
129	Sacramento	670.00	446	" "	2,046.20
130	San Joaquin	3,419.93	447	Colusa	3,040.00
136	Sacramento	439.36	463	Solano	29,913.08
137	Solano	3,528.25	501	"	11,978.00
140	San Joaquin	193.50	503	"	533.71
144	" "	4,683.50	527	Yolo	6,145.90
148	Sacramento	8,233.00	532	Sacramento	2,033.47
163	San Joaquin	1,628.51	561	San Joaquin	1,500.00
164	Contra Costa	661.73	563	Sacramento	4,528.59

TABULATION OF COMPLETED SWAMP LAND DISTRICTS OF CALIFORNIA, SHOWING NUMBER, LOCATION, AREA, AND DATE OF ORGANIZATION.

Districts Organized Under Act of March 28th, 1868, and Completed Since 1894.

Compiled from records of the State Surveyor-General, May, 1902.

No.	County.	Area, in Acres.	No.	County.	Area, in Acres.
578	Merced	124.90	681	Plumas	800.00
579	"	133.08	267	Lassen	4,400.00
580	"	34.54	682	Plumas	160.00
581	"	121.95	683	Humboldt	827.36
582	"	33.21	549	Tulare	7,720.78
583	"	85.39	687	Plumas	160.00
585	"	46.37	685	Kings	6,201.05
586	"	109.19	686	"	5,136.78
587	"	52.30	690	"	2,302.96
588	"	84.13	693	Plumas	1,029.72
591	"	29.57	694	"	379.27
592	"	71.25	696	Merced	192.00
593	"	16.98	699	"	400.00
594	"	19.92	558	Modoc	440.00
596	"	31.86	697	Lassen	120.00
597	"	20.03	701	Modoc	201.73
598	"	38.90	702	"	455.24
599	"	16.26	703	Plumas	40.00
600	"	69.76	708	Modoc	156.26
609	"	47.26	707	"	237.30
610	"	20.69	710	"	60.83
613	Humboldt	467.98	711	"	160.00
311	"	991.00	712	Trinity	240.00
674	Tulare	625.90	704	Modoc	154.10
679	Modoc	120.00	709	"	70.11
677	Kings	240.00	718	Plumas	720.00
678	"	80.00	719	"	479.37
680	Plumas	174.33	705	Kings	909.80

It appears from the foregoing tables, which are not complete, that approximately 640,000 acres are included within the completed reclamation districts.

An approximate estimate of all the land in California subject to overflow is fully 1,000,000 acres. All of this land (except some lakes) has surface elevations above low tide in Suisun Bay; but one third of said land has an elevation of less than ten feet above said low tide.

The boundary of the foregoing estimate of low-land area is defined by official surveys segregating high and low lands; but the flood plane has raised in recent years, and therefore a broad area of land formerly classed as upland is now submerged during excessive flood periods.

SACRAMENTO, May 25, 1902.

RECLAMATION AND DRAINAGE ASSOCIATION:

GENTLEMEN: A few references to local changes in flood extent and increasing seriousness should impress us with the danger of neglected action and the importance of harmony in advocating speedy and proper measures for improvement and relief.

Fremont, opposite the mouth of Feather River, was once a thriving village and the county seat of Yolo County, but has since been abandoned to the havoc of a rising flood plane.

Old Rio Vista, prior to 1862, was located about two miles above its present site and was on land free from overflow, but during the flood of 1862 it was washed away.

The Tule House, near the middle of Yolo Basin, was a busy wayside inn from 1852 to 1862, but has since been abandoned and the site is annually submerged.

The line of segregation between the swamp and high land in the lower Yolo Basin followed a subdivisional survey that very nearly corresponds to an elevation of ten feet above low tide in Suisun Bay; but the floods of recent years have marked eight feet higher than the established line of segregation, and the flood waters have extended laterally over broad areas of original high land.

A recent cutoff for straightening the channel of Cache Slough near its mouth, passes through land several feet below flood height, and the excavation disclosed an old Indian burial-ground literally filled with skeletons.

Old settlers know that the flood plane has risen and broadened disastrously beyond the indications of flood height prior to 1862. The cause is as well known; the remedy is just as clear. It consists in the establishment of requisite conditions for increasing the carrying capacity of the river channel.

Build up levees for the upper river; straighten and deepen the river below; close the great crevasses through which diversion now continues until the low-water stage of summer; and provide for the disposal of the dangerous surplus over wide waste weirs with crest elevations as nearly up to the flood line as safety will permit them to be built. In this way only can be maintained the necessary velocity of current for continued suspension of sedimentary material from deposit in the channel. It is the interruption of this force, through unrestricted outflow to the basins, that has filled the river channel until its bottom, between Sacramento City and the mouth of Feather River, is several feet above the low-water line of 1854. To improve and deepen again, we must utilize the river channel to its fullest carrying capacity consistent with easy maintenance of levees for confinement of river floods to the river channel.

Bear in mind that three fourths of the river's floods now pour through the Yolo Basin in a direct cutoff to the mouth of Cache Slough, in distance forty miles shorter than the river channel.

These laws of hydraulics have been determined from experiments and observations: "A cutoff raises the surface of the river at the foot of the cut nearly as much as it depresses it at the head." "The country above the cut is relieved only at the expense of the country below." "If a series of cutoffs be made, the heights of the floods will be regularly decreased from a point midway in the series to the upper end, and regularly increased from the same point to the lower end." If these theories, which tests and observations have determined to be hydraulic laws, be true, is it any wonder that the lower river floods are so disastrously high?

We know by comparison of records that last winter's flood was fully eight feet below former register near the Tisdale break at the point of diversion of the flood water which flows in a natural cutoff through the Sutter Basin, and thence through Yolo Basin; and it was several feet above former records at the mouth of Cache Slough, which mouth is the lower end of the natural cutoff through the basins above.

Other influences of cutoffs may be learned by a review of the San Joaquin River improvement. Owing to free tidal outfall, cutoffs have there been recommended to improve navigation and facilitate flood-water escape. The work done has largely benefited the interests of navigation and drainage. In most instances where these San Joaquin River cutoffs have been made, the old channel has been completely filled up, because the current is turned to the cutoff and made sluggish in the old channel. This deposit is made, too, from a stream not more than half so heavily charged, during flood time, with sediment in suspension as is the Sacramento below the junction of its mining tributaries. The San Joaquin's low-water line has materially lowered in the last twenty years instead of raising by deposit, as certain reaches of the Sacramento certainly have done.

Experience seems to show that we can not defend diversion of the Sacramento River flood waters beyond such temporary volume as may be absolutely necessary to prevent substantial levees from breaking or overtopping in times of extreme flood, even if carried to an outfall by a channel other than the river, for the consequent interruption of current velocity essential to maintenance of sediment in suspension will cause deposit and further elevation of the water surface.

If the weirs already constructed on the Sacramento do not furnish sufficient relief for dangerous flood surplus, construct others where necessary.

When a plan for utilizing the utmost carrying capacity of the river consistent with safety to substantial levees has been perfected, a step in the direction of ultimate success has been taken, but not until then.

It is not claimed that the river can, at once, be made to carry all the flood waters in seasons of exceptional rainfall, but it may easily be made to carry much more than it now does under existing conditions of diversion through broken levees and deep crevasses, and this greater duty must be imposed upon the river channel in order to improve its navigation and facilitate flood escape.

All hydraulic authorities agree that if the volume of water in a silt-bearing stream, flowing through an alluvial bed of its own formation, be increased, the inevitable result will be an increase of velocity, and, consequently, of erosive and silt-bearing force, an increase of cross-sectional area, and a lowering of the surface slope. Any considerable and continued diversion from a stream is followed by exactly the converse of this law, which results in checking the velocity, filling the channel, and raising the surface slope.

When such a plan of river improvement has been perfected as will tax the river channel to its utmost capacity within the safety limit, the foothill streams and limited relief volume passing over the waste weirs to the basins can be trained through Cache Slough without danger of channel deposit or raising the flood plane by cutoff influences below.

You can not improve the rivers without helping reclamation; on the other hand, a world of money can be spent in reclamation without improving the rivers.

The great valleys of the Sacramento and San Joaquin rivers, together with the counties surrounding San Francisco Bay that are traversed by navigable streams and estuaries, which need improvement in the interest of reclamation and drainage, represent three fourths of the assessed valuation of the State of California.

The appropriation of $300,000, approved March 17, 1897, to be expended under the direction of a Commissioner of Public Works, "to improve and rectify river channels," etc., covers all the expenditures of the State so far made upon river improvement under approval of Government engineers and by permission of the Secretary of War.

The public acknowledgment of beneficent results from river improvement, so far executed by the State, would seemingly indicate that such work must remain an important factor in a comprehensive plan that must sooner or later be introduced for the preservation of the interests of navigation and reclamation from the more widespread ruin that must inevitably follow our neglect to remedy existing conditions of unrestricted flood diversion above and the consequent channel engorgement below.

Respectfully,

President.

CORRECTED REPORT

OF

SPANISH AND MEXICAN GRANTS IN CALIFORNIA,

COMPLETE TO FEBRUARY 25, 1886.

PREPARED BY

STATE SURVEYOR-GENERAL,

Published as Supplement to Official Report of 1883-84.

SACRAMENTO:
STATE OFFICE.....JAMES J. AYERS, SUPT. STATE PRINTING.
1886.

Corrected Report of Spanish and Mexican Grants in California,

COMPLETE TO FEBRUARY 25, 1886.

PREPARED BY

STATE SURVEYOR-GENERAL,

Published as Supplement to Official Report of 1883-84.

No. on Gen'l L. O. Map.	Name of Grant.	Confirmee.	Area.	Condition of Title.	Where Located.
124	Acalanes	Elam Brown	3,328.95	Patented May 18, 1858	Contra Costa.
67	Agua Caliente, part of	C. P. Stone	212.25	Patented May 7, 1880	Sonoma.
67	Agua Caliente, part of	M. G. Vallejo	1,864.23	Patented June 12, 1880	Sonoma.
67	Agua Caliente, part of	T. M. Leavenworth	591.87	Patented May 7, 1880	Sonoma.
67	Agua Caliente, part of	Joseph Hooker	550.86	Patented June 9, 1866	Sonoma.
136	Agua Caliente, part of	F. Higuera	9,563.87	Patented April 17, 1858	Alameda.
521	Agua Hedionda	J. M. Marron	13,311.01	Patented December 12, 1872	San Diego.
206	Agua Puerca y las Trancas	Rodriguez & Alviso	4,421.52	Patented March 1, 1867	Santa Cruz.
13	Aguas Frias	S. Todd	26,761.40	Patented July 19, 1860	Butte and Colusa.
437	Aguaje de la Centinella	B. Abila	2,219.26	Patented August 23, 1872	Los Angeles.
282	Aguajito	G. Tapia	3,322.56	Patented March 19, 1868	Monterey.
282	Aguajita	M. Villagrana	44.32	Not surveyed	Santa Cruz.
468	Alamitos, Los	A. Stearns	28,027.17	Patented August 29, 1874	Los Angeles.
358	Alamos, Los	J. A. de la Guerra	48,803.38	Patented September 12, 1872	Santa Barbara.
346	Alamos (Los) y Agua Caliente	A. Olivera et al.	26,626.23	Patented November 9, 1866	Kern.
265	Alisal, El	B. Bernal	5,941.12	Patented August 9, 1866	Monterey.
267	Alisal, El	M. T. de la G. Hartnell	2,971.26	Patented February 12, 1882	Monterey.
216	Aptos	Rafael Castro	6,685.91	Patented April 23, 1860	Santa Cruz.
242	Aromitas Las y Agua Caliente	F. A. McDougall et al.	8,659.69	Patented March 17, 1862	San Benito and Santa Cruz.
224	Animas, Las	Heirs of J. M. Sanchez	26,518.68	Patented March 15, 1873	Santa Clara.
133	Arroyo de la Alameda	J. de J. Vallejo	17,705.38	Patented January 1, 1858	Alameda.
540	Arroyo de la Laguna	J. & S. Williams	4,418.10	Patented February 20, 1882	Santa Cruz.
115	Arroyo de las Nueces y Bolbones	Heirs of J. S. de Pacheco	17,782.48	Patented April 18, 1866	Contra Costa.
169	Arroyo de los Pilareitos or Miramontes	J. C. Miramontes	4,424.11	Patented February 20, 1882	San Mateo.
214	Arroyo del Rodeo	Hames & Daubenbass	1,473.07	Patented May 3, 1882	Santa Cruz.
9	Arroyo Chico	John Bidwell	22,214.47	Patented April 4, 1860	Butte.
----	Arroyo de San Antonio	T. B. Valentine	13,316.00	Sold as public land but settled by issuanee of Valentine scrip	Sonoma.
339	Arroyo Grande	F. Branch	4,437.29	Patented April 10, 1867	San Luis Obispo.
297	Arroyo Seco	J. de la Torre	16,523.35	Patented June 30, 1859	Monterey.
99	Arroyo Seeo	Andres Pieo	48,857.52	Patented August 29, 1863	Amador, Sac'to, and San Joaquin.
318	Asuncion	P. Estrada	39,224.81	Patented March 22, 1866	San Luis Obispo.
317	Atascadero	H. Haight	4,348.23	Patented June 18, 1860	San Luis Obispo.

No. on Gen'l L. O. Map.	NAME OF GRANT.	Confirmee.	Area.	Condition of Title.	Where Located.
233	Ausaymas y San Felipe	F. P. Pacheco	35,504.34	Patented April 18, 1859	San Benito and Santa Clara.
455	Azusa	A. Duarte	6,595.62	Patented June 6, 1878	Los Angeles.
456	Azusa	Henry Dalton	4,431.47	Patented May 29, 1876	Los Angeles.
434	Ballona, La	A. Machado et al.	13,919.90	Patented December 8, 1873	Los Angeles.
3	Barranca (La) Colorada	W. B. Ide	17,707.49	Patented July 3, 1860	Tehama.
35	Baulinas, Las	G. Briones	8,911.34	Patented January 9, 1866	Marin.
29	Bluchcr	Heirs of S. Smith	26,759.42	Patented June 19, 1858	Marin and Sonoma.
539	Boca de Santa Monica	Ysidro Reyes et al.	6,656.93	Patented July 21, 1882	Los Angeles.
125	Boca de la Cañada del Pinole	M. M. Valencia	13,316.26	Patented November 30, 1878	Contra Costa.
502	Boca de la Playa	E. Vejar	6,607.37	Patented March 1, 1879	Los Angeles.
27	Bodega	M. T. Curtis et al.	35,487.53	Patented April 18, 1859	Sonoma.
18	Boga	T. O. Larkin	22,184.66	Patented October 5, 1865	Butte and Sutter.
469	Bolsa Chica, La	J. Ruiz	8,107.46	Patented May 7, 1874	Los Angeles.
245	Bolsa Nueva y Moro Cojo	M. A. P. de Castro et al.	30,901.34	Patented November 20, 1873	Monterey.
352	Bolsa del Chamisal	L. T. Burton	14,335.22	Patented August 27, 1867	San Luis Obispo.
252	Bolsa de Escarpinas	S. Espinosa	6,415.96	Patented September 26, 1876	Monterey.
221	Bolsa de San Cayetano	J. de J. Vallejo	8,866.43	Patented February 14, 1865	Monterey.
231	Bolsa de San Felipe	F. P. Pacheco	6,794.76	Patented January 14, 1871	San Benito.
220	Bolsa del Pajaro	S. Rodriguez	5,496.50	Patented January 4, 1860	Santa Cruz.
254	Bolsa del Potrero y Moro Cojo, or La Sagrada Familia	J. B. R. Cooper	6,915.77	Patented December 19, 1859	Monterey.
471	Bolsas, Las, one undivided one half	R. Yorba et al.	33,460.04	Patented June 19, 1874	Los Angeles.
471	Bolsas, Las, one undivided one half	Maria C. Nieto		Patented August 27, 1877	Los Angeles.
7	Bosquejo	P. Lassen	22,206.27	Patented January 10, 1862	Butte and Tehama.
518	Buena Vista	J. Machado	2,288.00	Before Com. Gen'l Land Office	San Diego.
274	Buena Vista	Malarin, att'y for Estrada	7,725.56	Patented September 15, 1869	Monterey.
150	Buri Buri	J. de la Cruz Sanchez et al.	14,639.19	Patented October 17, 1872	San Mateo.
191	Butano	M. Rodriguez	4,438.67	Patented April 30, 1866	San Mateo.
429	Brea, La	A. J. Rocha et al.	4,439.07	Patented April 15, 1873	Los Angeles.
63	Cabeza de Santa Rosa, part of	Julo Carillo	4,500.42	Patented July 16, 1866	Sonoma.
63	Cabeza de Santa Rosa, part of	F. Carrillo de Castro	336.19	Patented August 25, 1881	Sonoma.
63	Cabeza de Santa Rosa, part of	Jas. Eldridge	1,667.68	Patented January 5, 1880	Sonoma.
63	Cabeza de Santa Rosa, part of	John Hendley	640.14	Patented December 9, 1879	Sonoma.
63	Cabeza de Santa Rosa, part of	J. de J. Mallagh	256.16	Patented December 11, 1879	Sonoma.

63	Cabeza de Santa Rosa, part of	J. R. Meyer et al.	1,484.82	Patented April 9, 1879	Sonoma.
425	Cahuenga	D. W. Alexander et al.	388.34	Patented August 2, 1872	Los Angeles.
534	Cajon, El	Thos. W. Sutherland, guardian, etc.	48,799.85	Patented April 6, 1876	San Diego.
407	Calleguas	Gabriel Ruiz	9,998.29	Patented March 22, 1866	Ventura.
543	Camaritas, Las	Ferdinand Vassault	18.57	Sent up for patent Oct. 20, 1882	San Francisco.
100	Campo de los Franceses	C. M. Weber	48,747.03	Patented March 18, 1861	San Joaquin.
414	Cañada, La	J. R. Scott et al.	5,832.10	Patented August 1, 1866	Los Angeles.
84	Cañada de Capay	Jasper O'Farrell et al.	40,078.58	Patented February 16, 1865	Yolo.
193	Cañada de los Capitaneillos	Guadalupe Mining Comp'y	1,109.67	Patented September 20, 1871	Santa Clara.
151	Cañada de Guadelupe la Visitacion y Rodeo Viejo	H. R. Payson	5,473.47	Patented December 15, 1865	San Francisco and San Mateo.
152	Cañada de Guadelupe y Rodeo Viejo	Wm. Pierce	942.93	Patented September 22, 1865	San Francisco and San Mateo.
40	Cañada de Herrera	Heirs of D. Sais	6,658.45	Patented June 26, 1876	Marin.
52	Cañada de Jonive	J. O'Farrell	10,786.51	Patented February 18, 1858	Sonoma.
181	Cañada de Pala	J. J. de Bernal et al.	15,714.10	Patented March 9, 1863	Santa Clara.
51	Cañada de Pogolimi	M. A. Cazares	8,780.81	Patented November 3, 1858	Sonoma.
168	Cañada de Raymundo	Greer & Coppinger	12,545.10	Patented July 19, 1859	San Mateo.
377	Cañada de Salsipuedes	John Keyes	6,656.21	Patented February 18, 1874	Santa Barbara.
197	Cañada de San Felipe y Las Animas	C. M. Weber	8,787.80	Patented August 9, 1866	Santa Clara.
391	Cañada de San Miguelito	J. F. de Rodriguez et al.	8,877.04	Patented June 15, 1871	Ventura.
513	Cañada de San Vicente y Mesa del Padre Barrona	Domingo Yorba	13,316.13	Patented November 17, 1873	San Diego.
170	Cañada de Verde y Arroyo de la Purisima	J. A. Alviso	8,905.58	Patented Deeember 15, 1865	San Mateo.
380	Cañada del Corral	J. D. Ortega	8,875.76	Patented May 30, 1866	Santa Barbara.
----	Cañada del Corte de Madera	Thurn & Carpentier	3,565.91	Patented June 13, 1882	San Mateo.
114	Cañada del Hambre y las Bolsas	Theodora Soto	13,353.95	Patented Deeember 31, 1866	Contra Costa.
208	Cañada del Rincon en el Rio de San Lorenzo de Santa Cruz	Pedro Sansevain	5,826.86	Patented June 4, 1858	Santa Cruz.
243	Cañada de la Carpinteria	Heirs of J. Soto	2,236.13	Patented October 10, 1873	Monterey.
283	Cañada de la Segunda	F. M. Haight	4,366.80	Patented February 4, 1859	Monterey.
498	Cañada de los Alisos	J. Serrano	10,668.81	Patented June 27, 1871	Los Angeles.
109	Cañada de los Baqueros	Livermore & Noriega	17,760.00	Before Surveyor-General	Alameda and Contra Costa.
535	Cañada de los Coches	A. Lestrada	28.39	Patented April 2, 1873	San Diego.
----	Cañada de los Nogales	J. M. Aguilar	1,199.56	Patented May 4, 1882	Los Angeles.
331	Cañada de los Osos and Pecho y Islay	John Wilson	32,430.76	Patented September 23, 1869	San Luis Obispo.
363	Cañada de los Pinos, or College Rancho	Bishop J. S. Alemany	35,499.37	Patented February 28, 1861	Santa Barbara.
390	Cañada Larga ó Verde	J. Alvarado	6,659.04	Patented Mareh 26, 1873	Ventura.
475	Cañada de Santa Ana	B. Yorba	13,328.53	Patented July 21, 1866	Los Angeles and San Bernardino.

No. on Gen'l L. O. Map.	NAME OF GRANT.	Confirmee.	Area.	Condition of Title.	Where Located.
8	Capay	J. Soto	44,388.17	Patented August 18, 1859	Colusa and Tehama.
194	Capitancillos, Los	Charles Fossatt	3,360.48	Patented February 3, 1865	Santa Clara.
209	Carbonera, La	William Bocle	2,224.79	Patented July 7, 1873	Santa Cruz.
79	Carne Humana	Heirs of Edward A. Bale	17,962.22	Patented September 4, 1879	Napa.
224	Carneros, Los	Daniel Littlejohn	4,482.38	Patented August 9, 1866	Monterey.
246	Carneros, Los	F. A. McDougall et al.	1,628.70	Patented March 17, 1862	Monterey and San Benito.
57	Caslamayomi	Wm. Forbes	26,788.36	Patented December 18, 1874	Sonoma.
355	Casmalia	A. Olivera	8,841.21	Patented July 30, 1863	Santa Barbara.
345	Castec	J. M. Covarrubias	22,178.28	Patented November 27, 1866	Kern.
82	Catacula	J. B. Chiles	8,545.72	Patented April 22, 1865	Napa.
78	Caymus	Geo. C. Yount	11,886.63	Patented April 3, 1863	Napa.
467	Cerritos, Los	Juan Temple	27,054.36	Patented December 7, 1867	Los Angeles.
536	Chamisal, El	Heirs of Felipe Vasquez	2,737.44	Patented March 20, 1877	Monterey.
89	Chimiles	Gordon & Combs	17,762.44	Patented December 19, 1860	Napa.
314	Cholame	E. E. White	26,621.82	Patented April 1, 1865	Monterey and San Luis Obispo.
328	Chorro, El	Juan Wilson	3,166.99	Patented March 29, 1861	San Luis Obispo.
270	Chualar	M. Malarin, executor, etc.	8,889.68	Patented October 31, 1872	Monterey.
250	Cienega de Gabilan	J. D. Carr	48,780.72	Patented October 15, 1867	San Benito and Monterey.
268	Cienega de los Paicines	A. Castro et al.	8,917.52	Patented September 23, 1869	San Benito.
436	Cienega ó Paso de la Tijera	T. Sanchez et al.	4,481.05	Patented May 22, 1873	Los Angeles.
428	Cienegas, Las	J. Abila et al.	4,439.05	Patented June 15, 1871	Los Angeles.
383	Cieneguitas, Las	A. Carrillo	28.15	In Court on title	Santa Barbara.
296	Coches, Los	M. J. Soberanes	8,794.02	Before Surveyor-General	Monterey.
186	Coches, Los	A. Suñol et al.	2,219.34	Patented December 31, 1857	Santa Clara.
59	Collayomi	Ritchie & Forbes	8,241.74	Patented January 5, 1863	Lake.
17	Colus	C. D. Semple	8,876.02	Patented July 23, 1869	Colusa.
408	Conejo, El	J. de la G. y Noriega	48,671.56	Patented January 8, 1873	Los Angeles and Ventura.
337	Corral de Piedra	J. M. Villavicencio	30,911.20	Patented October 29, 1867	San Luis Obispo.
362	Corral de Quati	M. A. de la G. y Lataillade	13,322.29	Patented August 7, 1876	Santa Barbara.
290	Corral de Tierra	H. D. McCobb	4,434.77	Patented January 21, 1876	Monterey.
165	Corral de Tierra	Heirs of F. G. Palomares	7,766.35	Patented April 7, 1866	San Mateo.
166	Corral de Tierra	Tiburcio Vasquez	4,436.18	Patented January 6, 1873	San Mateo.
219	Corralitos Rancho de los	Heirs of José Amesti	15,440.02	Patented February 28, 1861	Santa Cruz.
173	Corte de Madera, El	M. Martinez	13,316.05	Patented June 19, 1858	San Mateo and Santa Clara.
47	Corte Madera de Novato	Juan Martin	8,878.82	Patented May 23, 1863	Marin.
42	Corte Madera del Presidio	Heirs of John Read	7,845.12	Patented February 25, 1885	Marin.

94	Cosumnes	Heirs of W. E. P. Hartnell	26,605.37	Patented April 29, 1869	Sacramento.
65	Cotate	T. S. Page	17,238.60	Patented February 18, 1858	Sonoma.
472	Coyotes, Los	Andres Pico et al.	48,806.17	Patented March 9, 1875	Los Angeles.
----	Cruces, Las	Miguel Cordero et al.	8,888.00	Patented July 7, 1883	Santa Barbara.
538	Cuca, or El Potrero	M. J. de los Angeles	2,174.25	Patented July 22, 1878	San Diego.
479	Cucamonga	L. V. Prudhomme	13,045.20	Patented December 9, 1872	San Bernardino.
341	Cuyama	M. A. de la G. y Lataillade	22,193.21	Patented July 20, 1877	San Luis Obispo.
342	Cuyama	Heirs of C. Lataillade	48,827.50	Patented January 10, 1879	San Luis Obispo.
512	Cuyamaca	Augustin Olivera	35,501.32	Patented December 19, 1874	San Diego.
381	Dos Pueblos, Los	N. A. Den	15,534.76	Patented February 23, 1877	Santa Barbara.
411	Encino, El	V. de la Osa et al.	4,460.73	Patented January 8, 1873	Los Angeles.
409	Escorpion, El	Urbano et al.	1,109.65	Patented December 11, 1876	Los Angeles.
142	Embarcadero de Santa Clara	B. Bernal	179.60	Final decree not entered	Santa Clara.
522	Encenitos, Los	Andres Ybarra	4,431.03	Patented April 18, 1871	San Diego.
269	Encinal y Buena Esperanza	D. Spence	13,391.64	Patented May 23, 1862	Monterey.
74	Entre Napa, part of	P. D. Bailey	400.57	Before Surveyor-General	Napa.
74	Entre Napa, part of	N. Coombs	80.48	Patented June 9, 1866	Napa.
74	Entre Napa, part of	J. Green	2,051.04	Patented April 1, 1881	Napa.
74	Entre Napa, part of	M. F. de Higuara	877.53	Patented November 4, 1879	Napa.
74	Entre Napa, part of	Ralph L. Kilburn	403.96	Before Surveyor-General	Napa.
74	Entre Napa, part of	Jos. Mount et al.	40.00	Before Surveyor-General	Napa.
----	Entre Napa, part of	Mount & Cotrell	1,103.68	Before Surveyor-General	Napa.
74	Entre Napa, part of	John Patchett	69.88	Before Surveyor-General	Napa.
74	Entre Napa, part of	J. P. Thompson	307.05	Before Surveyor-General	Napa.
74	Entre Napa, part of	J. P. Walker	62.07	Before Surveyor-General	Napa.
74	Entre Napa, part of	Edward Wilson	335.28	Before Surveyor-General	Napa.
74	Entre Napa, part of, or Los Carneros	Charles E. Hart	360.00	No decree filed	Napa.
74	Entre Napa, part of, or Rincon de los Carneros	Julius Martin	2,557.68	Patented April 3, 1858	Napa.
14	Esquon	Samuel Neal	22,193.78	Patented April 4, 1860	Butte.
28	Estero Americano	Jaspar O'Farrell	8,849.13	Patented February 3, 1858	Sonoma.
10	Farwell Rancho	James Williams et al.	22,193.93	Patented July 1, 1863	Butte.
426	Feliz, Los	M. Y. Berdugo	6,647.46	Patented April 18, 1871	Los Angeles.
167	Feliz	D. Feliz	4,448.27	Patented June 21, 1873	San Mateo.
15	Fernandez	D. Z. Fernandez et al.	17,805.84	Patented October 14, 1867	Butte.
4	Flores, Las	Wm. G. Chard	13,315.58	Patented September 19, 1859	Tehama.
253	Gatos, Los, or Santa Rita	D. Perez et al.	4,424.46	Patented April 4, 1870	Monterey.
25	German	Chas. Meyer et al.	17,580.01	Patented July 30, 1872	Sonoma.
382	Goleta, La	Daniel Hill	4,426.10	Patented March 10, 1865	Santa Barbara.
406	Gaudalasca	Ysabel Yorba	30,593.85	Patented September 1, 1873	Ventura.
353	Guadalupe	D. Olivera et al.	43,681.85	Patented March 1, 1870	Santa Barbara & San Luis Obispo.
273	Guadalupe y Llanitos de los Correos	M. Malarin, executor, etc.	8,858.44	Patented June 29, 1865	Monterey.
515	Guejito	G. W. Hamley	13,298.59	Patented May 24, 1866	San Diego.

No. on Gen'l L. O. Map.	NAME OF GRANT.	Confirmee.	Area.	Condition of Title.	Where Located.
58	Guenoc	Ritchie & Forbes	21,220.03	Patented May 22, 1865	Lake.
66	Guilicos, Los	Juan Wilson	18,833.86	Patented June 16, 1866	Sonoma.
519	Guajome	A. Solma et al.	2,219.41	Patented September 7, 1871	San Diego.
462	Habra, La	Andres Pico et al.	6,698.57	Patented December 4, 1872	Los Angeles.
19	Honcut	Chas. Covillaud et al.	31,079.96	Patented March 9, 1863	Yuba.
340	Huasna	I. J. Sparks	22,152.99	Patented January 23, 1879	San Luis Obispo.
182	Huecos, Los	Roland & Hornsby	39,950.92	Patented May 13, 1876	Santa Clara.
315	Huer-h-uero	F. Branch	15,684.95	Patented August 9, 1866	San Luis Obispo.
421	Huerta de Cuati	V. Reid	128.26	Patented June 30, 1859	Los Angeles.
330	Huerta de Romualdo or El Chorro	Juan Wilson	117.13	Patented April 13, 1871	San Luis Obispo.
72	Huichica	J. P. Leese	18,704.04	Patented August 3, 1859	Sonoma and Napa.
404	Island of Santa Cruz	Andres Castillero	52,760.33	Patented March 21, 1867	Santa Barbara.
527	Island of San Diego	Peachy & Aspinwall	4,185.46	Patented June 11, 1869	San Diego.
470	Island of Santa Catalina	J. M. Covarrubias	45,820.43	Patented April 10, 1867	Los Angeles.
405	Island of Santa Rosa	M. C. de Jones et al.	62,696.49	Patented October 3, 1871	Santa Barbara.
11	Jacinto	Wm. M. McKee	35,487.52	Patented September 19, 1859	Colusa.
531	Jamacha	A. Lorenzana	8,881.16	Patented April 11, 1871	San Diego.
541	Jamul	Heirs of H. S. Burton	8,926.22	Patented October 26, 1876	San Diego.
356	Jesus Maria	L. P. Burton et al.	42,184.93	Patented September 7, 1871	Santa Barbara.
22	Jimeno	Larkin & Missroon	48,854.26	Patented July 18, 1862	Colusa and Yolo.
21	Johnson Rancho	Wm. Johnson	22,197.31	Patented August 3, 1857	Yuba.
80	Jota, La	Geo. C. Yount	4,453.84	Patented December 18, 1857	Napa.
113	Juntas, Las	Heirs of Wm. Welch	13,292.82	Patented July 22, 1870	Contra Costa.
241	Juristac	J. L. Sargent et al.	4,540.44	Patented November 13, 1871	Santa Clara.
483	Jurupa, part of	A. Stearns	33,819.11	Patented May 23, 1879	San Bernardino.
482	Jurupa, part of	L. Rubideau	6,749.99	Patented December 8, 1876	San Bernardino.
69	Lac	J. P. Leese	176.58	Patented August 6, 1872	Sonoma.
360	Laguna, La	O. Gutierrez	48,703.91	Patented May 17, 1867	Santa Barbara.
495	Laguna, La	A. Stearns	13,338.84	Patented September 3, 1872	San Diego.
332	Laguna	Bishop J. S. Alemany	4,157.02	Patented February 4, 1859	San Luis Obispo.
217	Laguna de las Calabazas	F. Hernandez et al.	2,304.75	Patented December 8, 1868	Santa Cruz.
163	Laguna de la Merced	J. de Haro et al.	2,219.33	Patented September 10, 1872	San Francisco and San Mateo.
123	Laguna de los Palos Colorados	J. Moraga et al.	13,316.25	Patented August 10, 1878	Contra Costa.
30	Laguna de San Antonio	B. Bojorquez	24,903.42	Patented November 21, 1871	Marin and Sonoma.
301	Laguna de Tache	M. Castro	48,800.62	Patented March 6, 1866	Fresno.

276	Laguna Seca	C. M. de Munras	2,179.50	Patented November 24, 1865	Monterey.
196	Laguna Seca	L. C. Bull et al.	19,972.92	Patented November 24, 1865	Santa Clara.
16	Larkin's Children's Ranch	F. Larkin et al.	44,364.22	Patented December 18, 1857	Colusa.
289	Laureles, Los	J. M. & J. de M. Boronda	6,624.99	Patented August 9, 1866	Monterey.
285	Laureles, Los	L. Ransom	718.23	Patented April 18, 1871	Monterey.
347	Liebre, La	J. M. Flores	48,799.59	Patented June 21, 1875	Kern and Los Angeles.
266	Llano de Buena Vista	D. Spence	8,446.23	Patented January 4, 1860	Monterey.
12	Llano Seco	C. J. Brenham et al.	17,767.17	Patented June 18, 1860	Butte.
64	Llano de Santa Rosa	J. Carrillo	13,316.03	Patented November 27, 1865	Sonoma.
230	Llano del Tequesquite	V. Sanchez et al.	16,016.30	Patented December 29, 1871	San Benito.
81	Locoallomi	Heirs of Julian Pope, dec'd	8,872.79	Patented March 17, 1862	Napa.
366	Lomas de la Purificacion	Augustin Janseus	13,341.38	Patented April 18, 1871	Santa Barbara.
499	Lomas de Santiago	Teodocio Yorba	47,226.61	Patented February 1, 1868	Los Angeles.
239	Lomerias Muertas	V. Sanchez et al.	6,659.91	Patented August 9, 1866	San Benito.
374	Lompoc	J. & J. A. Carrillo	42,085.44	Patented November 3, 1873	Santa Barbara.
427	Los Angeles City Lands	City of Los Angeles	17,172.37	Pat'd Aug. 4, '75 and Aug. 9, '66	Los Angeles.
----	Los Angeles County, lot near San Pedro in	Temple & Alexander	1,771.77	Before Surveyor-General	Los Angeles.
60	Mallacomes or Moristal	Cook & Ingalls	2,559.94	Patented February 18, 1859	Sonoma.
61	Mallacomes or Moristal y Plan de Agua Caliente, part of	J. S. Berreyesa	17,742.72	Patented July 10, 1873	Sonoma and Napa.
----	Mare Island	G. W. P. Bissell et al.	5,527.22	Final decree not entered	Solano.
104	Mariposas, Las	J. C. Fremont	44,386.83	Patented February 19, 1856	Mariposa.
111	Medanos, Los	J. D. Stevenson	8,858.83	Patented October 8, 1872	Contra Costa.
110	Meganos, Los	Alice Marsh	13,316.00	Patented August 19, 1867	Contra Costa.
443	Merced, La	F. P. F. Temple et al.	2,363.75	Patented February 13, 1872	Los Angeles.
212	Mesa de Ojo de Agua	T. W. Russell	54.36	Not approved by Com. G. L. O.	Santa Cruz.
138	Milpitas	Heirs of J. M. Alviso	4,457.66	Patented June 30, 1871	Santa Clara.
307	Milpitas	Ygnacio Pastor	43,280.90	Patented February 18, 1875	Monterey.
281	Mission Carmelo	Bishop J. S. Alemany	9.00	Patented October 19, 1859	Monterey.
----	Mission Dolores, lot in	Candelario Valencia	1.78	Patented December 16, 1882	San Francisco.
----	Mission Dolores, lot in	Elizabeth de Zaldo	.45	Sent up for Patent Aug. 26, 1882	San Francisco.
161	Mission Dolores, two tracts at	Bishop J. S. Alemany	8.54	Patented March 3, 1858	San Francisco.
156	Mission Dolores, lot in	F. DeHaro	2.04	Before Surveyor-General	San Francisco.
157	Mission Dolores, lot in	F. DeHaro	.44	Sent up for Patent Aug. 21, 1885	San Francisco.
----	Mission Dolores, lot in	E. & J. R. Valencia	.50	Rejected	San Francisco.
160	Mission Dolores, suerte in	Heirs of F. G. Palomares	28.41	Patented April 1, 1870	San Francisco.
158	Mission Dolores, suerte in	C. S. de Bernal et al.	5.86	Patented June 13, 1882	San Francisco.
372	Mission la Purisima	J. R. Malo	14,735.76	Patented October 12, 1882	Santa Barbara.
373	Mission Purisima de la	Bishop J. S. Alemany	14.04	Patented January 24, 1874	Santa Barbara.
308	Mission San Antonio	Bishop J. S. Alemany	33.19	Patented May 31, 1862	Monterey.
392	Mission San Buenaventura	Bishop J. S. Alemany	36.27	Patented May 23, 1862	Ventura.
393	Mission San Buenaventura, lot in	Fernando Tico	28.90	Patented June 9, 1866	Ventura.
396	Mission (Ex) San Buenaventura	M. A. R. de Poli	48,822.91	Patented August 24, 1874	Ventura.
533	Mission San Diego	Bishop J. S. Alemany	22.21	Patented May 23, 1862	San Diego.

No. on Gen'l L. O. Map.	NAME OF GRANT.	Confirmee.	Area.	Condition of Title.	Where Located.
532	Mission (Ex) San Diego	S. Arguello	58,875.38	Patented September 1, 1876	San Diego.
412	Mission San Fernando	Bishop J. S. Alemany	76.94	Patented May 31, 1864	Los Angeles.
410	Mission (Ex) San Fernando	E. de Celis	116,858.46	Patented January 8, 1873	Los Angeles.
448	Mission San Gabriel	Bishop J. S. Alemany	190.69	Patented November 19, 1859	Los Angeles.
----	Mission San Gabriel, lot near	R. Valenzuela et al.	23.63	Patented December 4, 1875	Los Angeles.
135	Mission San José	Bishop J. S. Alemany	28.33	Patented March 3, 1858	Alameda.
240	Mission San Juan Bautista	Bishop J. S. Alemany	55.23	Patented November 19, 1859	San Benito.
503	Mission San Juan Capistrano	Bishop J. S. Alemany	44.40	Patented March 18, 1865	Los Angeles.
504	Mission San Juan Capistrano, tract near	S. Rios	7.09	Patented March 1, 1879	Los Angeles.
----	Mission San Luis Obispo	Bishop J. S. Alemany	52.72	Patented September 2, 1859	San Luis Obispo.
333	Mission San Luis Obispo, lot in	Juan Wilson	1.00	In Court on title	San Luis Obispo.
521	Mission (Ex) San Luis Rey	Bishop J. S. Alemany	53.39	Patented March 18, 1865	San Diego.
313	Mission San Miguel	Bishop J. S. Alemany	33.97	Patented September 2, 1859	Monterey.
43	Mission San Rafael	Bishop J. S. Alemany	6.48	Patented October 19, 1859	Marin.
384	Mission Santa Barbara	Bishop J. S. Alemany	283.13	Patented March 18, 1865	Santa Barbara.
188	Mission Santa Clara	Bishop J. S. Alemany	19.95	Patented March 3, 1865	Santa Clara.
----	Mission Santa Clara, lot near	F. Arce	10.00	No decree on file	Santa Clara.
210	Mission Santa Cruz	Bishop J. S. Alemany	16.94	Patented September 2, 1859	Santa Cruz.
368	Mission Santa Ynez	Bishop J. S. Alemany	17.35	Patented May 23, 1862	Santa Barbara.
295	Mission Soledad	Bishop J. S. Alemany	34.47	Patented November 19, 1859	Monterey.
294	Mission (Ex) Soledad	F. Soberanes	8,899.82	Patented May 18, 1874	Monterey.
70	Mission Sonoma	Bishop J. S. Alemany	14.20	Patented May 31, 1862	Sonoma.
376	Mission Vieja de la Purisima	J. & J. Carillo	4,413.60	Patented November 7, 1873	Santa Barbara.
496	Mission Vieja, or La Paz	Juan Forster	46,432.65	Patented August 6, 1866	Los Angeles.
53	Molinos, Los	J. B. R. Cooper	17,892.42	Patented April 3, 1858	Sonoma.
506	Monserate	Y. M. Alvarado	13,322.90	Patented July 17, 1872	San Diego.
112	Monte del Diablo	S. Pacheco	17,921.54	Patented March 19, 1859	Contra Costa.
----	Monterey County, tract in	Heirs of T. Blanco	44.99	Patented November 28, 1881	Monterey.
----	Monterey County, tract in	Rufina Castro	33.47	Patented March 18, 1885	Monterey County.
262	Monterey County, tract in	Henry Cocks	1,106.03	Patented August 8, 1870	Monterey County.
258	Monterey County, tract in	Simeon Castro	112.83	Patented July 30, 1867	Monterey County.
284	Monterey County, tract in	James Meadows	4,591.71	Patented August 9, 1866	Monterey County.
256	Monterey County, city lands	City of Monterey	30,865.55	Before Com. Gen'l Land Office	Monterey County.
325	Moro y Cayucos	J. McKinley	8,845.49	Patented January 19, 1878	San Luis Obispo.
26	Muniz	M. Torres	17,760.75	Patented February 4, 1860	Sonoma.

480	Muscupiabe	M. White	30,144.88	Patented June 22, 1872	San Bernardino.
528	Nacion, De la	Juan Forster	26,631.94	Patented February 27, 1866	San Diego.
263	Nacional	Vicente Cantua	6,633.29	Patented April 7, 1866	Monterey.
76	Napa, part of	S. Vallejo	3,178.93	Patented June 9, 1866	Napa.
76	Napa, part of	Lyman Bartlett	679.52	Patented June 9, 1866	Napa.
76	Napa, part of	A. L. Boggs	320.55	Patented May 11, 1877	Napa.
76	Napa, part of	L. W. Boggs	679.66	Sent up December 7, 1880	Napa.
76	Napa, part of	J. E. Brown	647.47	Before Com. Gen'l Land Office	Napa.
76	Napa, part of	L. D. Brown	640.00	No decree filed	Napa.
76	Napa, part of	Nathan Coombs	325.42	Patented March 25, 1873	Napa.
76	Napa, part of	G. N. Cornwall	600.00	No decree filed	Napa.
76	Napa, part of	A. Farley	89.42	Before Surveyor-General	Napa.
76	Napa, part of	O. H. Frank	8,365.37	Before Surveyor-General	Napa.
76	Napa, part of	J. M. Harbin	664.88	Sent up for patent	Napa.
76	Napa, part of	Hart & McGarry	470.14	Before Surveyor-General	Napa.
76	Napa, part of	Johnson Horrell	459.99	Before Surveyor-General	Napa.
76	Napa, part of	H. Ingraham	74.00	No decree filed	Napa.
76	Napa, part of	Wm. Keely	45.84	Before Surveyor-General	Napa.
76	Napa, part of	Eben Knight	160.00	Before Surveyor-General	Napa.
76	Napa, part of	H. G. Langley	680.10	Before Surveyor-General	Napa.
76	Napa, part of	John Love	100.80	Before Surveyor-General	Napa.
76	Napa, part of	B. McCoombs	140.37	Before Surveyor-General	Napa.
76	Napa, part of	Hannah McCoombs	160.79	Before Surveyor-General	Napa.
76	Napa, part of	J. R. McCoombs	485.60	Before Surveyor-General	Napa.
76	Napa, part of	Ann McDonald et al.	283.19	Before Surveyor-General	Napa.
76	Napa, part of	Jas. McNeil	450.00	No decree filed	Napa.
76	Napa, part of	W. H. Osborne	259.51	Patented June 9, 1866	Napa.
76	Napa, part of	A. A. Ritchie	150.35	Before Surveyor-General	Napa.
76	Napa, part of	J. K. Rose	594.83	Patented June 9, 1866	Napa.
76	Napa, part of	J. P. Thompson	604.68	Patented June 3, 1880	Napa.
76	Napa, part of	John Truebody	769.58	Before Surveyor-General	Napa.
76	Napa, part of	Ogden & Wise	637.11	Before Surveyor-General	Napa.
251	Natividad, La	Ramona Butron et al.	8,642.21	Patented October 1, 1874	Monterey.
20	New Helvetia	John A. Sutter	48,839.30	Patented June 20, 1866	Yuba, Sutter, and Sacramento.
32	Nicasio, part of	James Black	9,478.82	Patented November 1, 1861	Marin.
32	Nicasio, part of	B. R. Buckelew	8,695.27	Patented November 1, 1861	Marin.
32	Nicasio, part of	Frink & Reynolds	7,598.10	Patented November 1, 1861	Marin.
32	Nicasio, part of	H. W. Halleck	30,848.85	Patented November 1, 1861	Marin.
501	Niguil, El	Juan Abila et al.	13,316.01	Patented April 5, 1873	Los Angeles.
351	Nipomo	Wm. G. Dana	37,887.91	Patented December 14, 1868	San Luis Obispo.
278	Noche Buena	J. & J. de Monomany	4,411.56	Patented October 7, 1862	Monterey.
459	Nogales, Los	Maria de J. Garcia et al.	1,003.67	Patented June 29, 1882	Los Angeles.
367	Nojoqui	Raymundo Carillo	13,284.50	Patented September 11, 1869	Santa Barbara.
46	Novato	Assignees of Simmons	8,870.62	Patented April 10, 1866	Marin.
379	Nuestra Señora del Refugio	A. M. Ortega et al.	26,529.30	Patented July 28, 1866	Santa Barbara.

No. on Gen'l L. O. Map.	NAME OF GRANT.	Confirmee.	Area.	Condition of Title.	Where Located.
389	Ojai	Fernando Tico	17,716.83	Patented December 22, 1870	Ventura.
311	Ojitos, Los	M. Soberanes	8,900.17	Patented April 18, 1871	Monterey.
199	Ojo de Agua de la Coche	M. J. C. Murphy	8,927.10	Patented January 4, 1860	Santa Clara.
159	Ojo de Agua de Figueroa	Miranda et al.	1.77	Patented April 28, 1877	San Francisco.
48	Olompali	Camilo Ynitia	8,877.48	Patented December 18, 1862	Marin.
95	Omochumnes	Catharine Sheldon et al.	18,661.86	Patented July 1, 1870	Sacramento.
105	Orestimba	Sebastian Nunez	26,666.39	Patented July 30, 1863	Stanislaus and Merced.
529	Otay	M. Estudillo	6,657.98	Patented January 20, 1872	San Diego.
530	Otay or Janal	V. Dominguez et al.	4,437.16	Patented June 13, 1872	San Diego.
180	Pala	E. White et al.	4,454.08	Patented October 8, 1866	Santa Clara.
439	Palos Verdes, Los	J. L. Sepulveda et al.	31,629.43	Patented June 22, 1880	Los Angeles.
235	Panocha de San Juan y Los Carrisalitos	Ursua & Romo	22,175.34	Patented July 30, 1867	Merced.
282	Paraje de Sanchez	C. Lugo et al.	6,584.32	Patented August 9, 1866	Monterey.
96	Paso, Rancho del	Samuel Norris	44,371.42	Patented May 4, 1858	Sacramento.
465	Paso de Bartolo, part of	B. Guirado	875.99	Patented September 27, 1867	Los Angeles.
465	Paso de Bartolo, part of	Joaquin Sepulveda	207.79	Patented March 17, 1881	Los Angeles.
464	Paso de Bartolo	Pio Pico et al.	8,991.22	Patented August 5, 1881	Los Angeles.
320	Paso de Robles	P. Rios	25,993.18	Patented July 12, 1866	San Luis Obispo.
144	Pastoria de las Borregas	Martin Murphy, Jr.	4,894.35	Patented December 15, 1865	Santa Clara.
144	Pastoria de las Borregas	Mariano Castro	4,172.13	Patented September 17, 1881	Santa Clara.
490	Pauba	Luis Vignes	26,597.96	Patented January 19, 1860	San Diego.
507	Pauma	J. A. Serrano et al.	13,309.60	Patented August 29, 1871	San Diego.
525	Penasquitos, Los	F. M. Ruiz	8,486.01	Patented April 13, 1876	San Diego.
107	Pescadero, El	Hiram Grimes et al.	35,446.06	Patented January 18, 1858	Stanislaus and San Joaquin.
280	Pescadero, El	D. Jacks	4,426.46	Patented February 19, 1868	Monterey.
108	Peseadero, El	Pico & Nagle	35,546.39	Patented March 10, 1865	San Joaquin and Alameda.
49	Petaluma	M. G. Vallejo	66,622.17	Patented November 19, 1874	Sonoma.
321	Piedra Blanca	J. J. Pico	48,805.59	Patented October 9, 1876	San Luis Obispo.
126	Pinole, El	M. A. M. de Richardson	17,760.64	Patented August 22, 1868	Contra Costa.
310	Piojo, El	Heirs of Joaquin Soto	13,329.28	Patented April 30, 1866	Monterey.
336	Pismo	I. J. Sparks	8,838.89	Patented November 16, 1866	San Luis Obispo.
312	Pleyto	W. S. Johnson et al.	13,299.27	Patented March 7, 1872	Monterey.
227	Polka, La	M. J. C. Murphy	4,166.78	Patented March 3, 1860	Santa Clara.
401	Posas, Las	J. de la G. y Noriega	26,623.36	Patented January 18, 1881	Ventura.
120	Positas, Las	Livermore & Noriega	8,880.00	Patented May 25, 1872	Alameda.

385	Positas (Las) y La Calera	M. C. de Jones	3,281.70	Patented June 10, 1870	Santa Barbara.
145	Posolmi	Lopez Ynigo et al.	1,695.90	Patented January 18, 1881	Santa Clara.
298	Posa de los Ositos	Carlos Espinosa	16,938.98	Patented June 29, 1865	Monterey.
----	Potrero de la Mission Vieja de San Gabriel	Valenzuela et al.	90.00	Before Surveyor-General	Los Angeles.
134	Potrero de los Cerritos	Pacheco & Alviso	10,610.26	Patented February 21, 1866	Alameda.
446	Potrero de Felipe Lugo	Morillo & Romero	2,042.81	Patented June 15, 1871	Los Angeles.
286	Potrero de San Carlos	J. Gutierrez et al.	4,306.98	Patented June 9, 1862	Monterey.
329	Petrero de San Luis Obispo	M. C. Boronda	3,506.33	Patented July 1, 1870	San Luis Obispo.
178	Potrero de Santa Clara	R. F. Stockton	1,939.03	Patented December 30, 1861	Santa Clara.
494	Potreros of San Juan Capistrana	Juan Forster	1,167.74	Patented June 30, 1866	Los Angeles.
213	Potrero y Rincon de San Pedro de Reglado	T. W. Russell	91.53	Before Surveyor-General	Santa Cruz.
445	Potrero Grande	J. M. Sanchez	4,431.95	Patented July 19, 1859	Los Angeles.
537	Prietos (Los) y Najalayegua	José Dominguez	48,728.67	Patented February 19, 1875	Santa Barbara.
2	Primer Cañon ó Rio de los Berrendos	J. F. Dye	26,637.11	Patented February 28, 1871	Tehama.
419	Prospero Tract	R. Valenzuela et al.	23.63	Patented December 4, 1875	Los Angeles.
424	Providencia	D. W. Alexander et al.	4,064.33	Patented August 6, 1872	Los Angeles.
542	Pueblo, Lot No. 6	Pedro Chaboya	366.29	Patented June 21, 1876	Santa Clara.
460	Puente, La	Workman & Roland	48,790.55	Patented April 19, 1867	Los Angeles.
106	Puerto, Rancho del	Reed & Wade	13,340.39	Patented August 15, 1864	Stanislaus.
148	Pulgas, Las	M. de la S. O. de Arguello et al.	35,240.47	Patented October 2, 1857	San Mateo.
279	Punta de Pinos	H. De Graw et al.	2,666.51	Patented November 19, 1880	Monterey.
41	Punta de Quentin	B. R. Buckelew	8,877.44	Patented April 10, 1866	Marin.
375	Punta de la Concepcion	A. Carillo	24,992.04	Patented June 10, 1880	Santa Barbara.
354	Punta de la Laguna	L. Arellanes et al.	26,648.42	Patented October 2, 1873	Santa Barbara and S. Luis Obispo.
34	Punta de Los Reyes (Sobrante)	Andrew Randall	48,189.34	Patented June 4, 1860	Marin.
33	Punta de Los Reyes	Andrew Randall	8,877.68	Patented June 4, 1860	Marin.
205	Punta del Año Nuevo	Heirs of Simeon Castro	17,753.15	Patented December 3, 1857	San Mateo.
175	Purisima (La) Concepcion	Juana Briones	4,438.94	Patented August 15, 1871	Santa Clara.
83	Putas, Las	M. A. Higuera de Berreyessa et al.	35,515.82	Patented January 5, 1863	Solano.
88	Putos, Los	J. M. Vaca & J. F. Peña	44,383.78	Patented June 4, 1858	Solano.
187	Quito	M. Alvisu et al.	13,309.85	Patented May 14, 1866	Santa Clara.
85	Quesesosi	Wm. Gordon	8,894.49	Patented February 4, 1860	Yolo.
102	Rancheria del Rio Estanislao	Rico & Castro	48,886.64	Patented January 31, 1863	Stanislaus and Calaveras.
236	Real de los Aguilas	F. A. McDougal et al.	31,052.18	Patented September 23, 1869	San Benito.
207	Refugio	F. & J. Bolcoff	12,147.12	Patented February 4, 1860	Santa Cruz.
476	Rincon, El	Bernardo Yorba	4,431.47	Patented November 14, 1879	San Bernardino.
387	Rincon, El	Teodoro Arellanes	4,459.63	Patented November 22, 1872	Santa Barbara.
56	Rincon de Musulacon	Johnson Horrell et al.	8,866.89	Patented June 9, 1866	Sonoma.
146	Rincon de San Francisquito	T. E. & S. Robles	8,418.21	Patented February 19, 1868	Santa Clara.
261	Rincon de Sanjon	J. E. Boronda	2,229.70	Patented July 13, 1860	Monterey.
516	Rincon del Diablo	Heirs of Juan B. Alvarado	12,653.77	Patented May 3, 1872	San Diego.

No. on Gen'l L. O. Map.	NAME OF GRANT.	Confirmee.	Area.	Condition of Title.	Where Located.
461	Rincon de la Brea	G. Ybarra	4,452.59	Patented November 14, 1864	Los Angeles.
272	Rincon de la Punta del Monte	Teodoro Gonzales	15,218.62	Patented November 28, 1866	Monterey.
255	Rincon de las Salinas	Rafael Estrada	2,220.02	Patented March 1, 1881	Monterey.
153	Rincon de las Salinas y Potrero Viejo	Heirs of J. C. Bernal	4,446.40	Patented December 31, 1857	San Francisco and San Mateo.
435	Rincon de los Bueyes	F. Higuera et al.	3,127.89	Patented August 27, 1872	Los Angeles.
241	Rincon de los Esteros	Rafael Alviso et al.	2,200.19	Patented July 29, 1872	Santa Clara.
140	Rincon de los Esteros	F. Berreyesa et al.	1,844.54	Patented July 28, 1873	Santa Clara.
139	Rincon de los Esteros	E. E. White	2,308.17	Patented May 23, 1862	Santa Clara.
192	Rinconada de los Gatos	Hernandez & Peralta	6,631.44	Patented March 19, 1860	Santa Clara.
147	Rinconada del Arroyo de San Francisquito	Heirs of M. A. Mesa	2,229.84	Patented July 26, 1872	Santa Clara.
86	Rio Jesus Maria	J. M. Harbin et al.	26,637.42	Patented July 3, 1858	Yolo.
403	Rio de Santa Clara	Valentin Cota et al.	44,883.30	Patented September 5, 1872	Ventura.
98	Rio de los Americanos	J. L. Folsom	35,521.36	Patented November 4, 1864	Sacramento.
6	Rio de los Molinos	A. G. Toomes	22,172.46	Patented December 3, 1858	Tehama.
87	Rio de los Putos	Wm. Wolfskill	17,754.73	Patented December 18, 1858	Yolo and Solano.
50	Roblar de la Miseria	Daniel Wright et al.	16,887.45	Patented January 18, 1858	Sonoma.
----	Russell Tract	T. W. Russell	145.89	Before Surveyor-General	Santa Cruz.
257	Salinas, Las	Heirs of G. Espinoza	4,413.81	Patented March 26, 1867	Monterey.
223	Salsipuedes	James Blair et al.	31,201.37	Patented March 2, 1861	Santa Cruz and Santa Clara.
219	San Andres	Guadalupe Castro et al.	8,911.53	Patented January 31, 1876	Santa Cruz.
130	San Antonio, part of	Ygnacio Peralta	9,416.66	Patented February 3, 1858	Alameda.
129	San Antonio, part of	A. M. Peralta	15,206.59	Patented June 25, 1874	Alameda.
128	San Antonio, part of	V. & D. Peralta	18,848.98	Patented February 10, 1877	Alameda.
442	San Antonio	A. M. Lugo	29,513.35	Patented July 20, 1866	Los Angeles.
176	San Antonio	E. Mesa et al.	4,440.31	Patented August 6, 1866	Santa Clara.
----	San Antonio, part of	Wm. A. Dana et al.	3,541.80	Patented December 18, 1857	Santa Clara.
190	San Antonio, or Pescadero	J. J. Gonzales	3,282.32	Patented June 7, 1866	San Mateo.
413	San Antonio, or Rodeo de las Aguas	M. R. Valdez	4,449.31	Patented June 27, 1871	Los Angeles.
202	San Augustin	J. L. Majors	4,436.78	Patented July 25, 1866	Santa Cruz.
304	San Benito	James Watson	6,671.08	Patented September 6, 1869	Monterey.
303	San Bernabe	Henry Cocks	13,296.98	Patented March 27, 1873	Monterey.
326	San Bernardo	Vincente Cane	4,379.42	Patented April 1, 1865	San Luis Obispo.
524	San Bernardo	M. A. Snook	17,763.07	Patented November 17, 1874	San Diego.

306	San Bernardo	M. Soberanes	13,345.65	Patented March 9, 1874	Monterey.
481	San Bernardino	J. de C. Lugo et al.	35,509.41	Patented November 24, 1865	San Bernardino.
1	San Buenaventura	P. B. Reading	26,632.09	Patented January 17, 1857	Shasta.
369	San Carlos de Jonata	J. Carrillo et al.	26,634.31	Patented December 2, 1872	Santa Barbara.
526	San Diego, pueblo land	City of San Diego	47,323.08	Patented April 10, 1874	San Diego.
523	San Dieguito	J. L. Osuna et al.	8,824.71	Patented April 18, 1871	San Diego.
343	San Emidio	Francisco Dominguez	17,709.79	Patented April 10, 1866	Kern.
399	San Francisco	Jacoba Feliz et al.	48,611.88	Patented February 12, 1875	Ventura and Los Angeles.
155	San Francisco, pueblo land	City of San Francisco	12,643.44	Patented June 20, 1884	San Francisco.
----	San Francisco, tract in	Sherreback	120.00	Before Surveyor-General	San Francisco.
162	San Francisco, two lots in	J. P. Leese et al.	3.38	Patented March 3, 1858	San Francisco.
226	San Francisco de las Llagas	J. & M. Murphy	22,283.24	Patented March 19, 1868	Santa Clara.
174	San Francisquito	M. C. V. de Rodriguez	1,471.00	Patented June 8, 1868	Santa Clara.
287	San Francisquito	José Abrego et al.	8,813.50	Patented June 8, 1862	Monterey.
447	San Francisquito	Henry Dalton	8,893.62	Patented May 30, 1867	Los Angeles.
----	San Gabriel, tract near	Juan Silva	50.00	Before Surveyor-General	Los Angeles.
449	San Gabriel, tract near	H. P. Dorsey	50.41	Before Surveyor-General	Los Angeles.
420	San Gabriel, tract near	Michael White	78.23	Patented August 26, 1871	Los Angeles.
417	San Gabriel, tract near	José Ledesma	22.21	Patented June 20, 1871	Los Angeles.
416	San Gabriel, tract near	J. P. de J. Courtney	49.29	Patented June 20, 1871	Los Angeles.
450	San Gabriel, tract near	Francisco Sales	19.43	Patented June 20, 1871	Los Angeles.
451	San Gabriel, tract near	Simeon (Indian)	30.45	Patented December 27, 1876	Los Angeles.
452 418	} San Gabriel, two tracts near	Daniel Sexton	227.78	Patented May 16, 1871	Los Angeles.
453	San Gabriel, tract near	José Domingo	22.34	Patented August 23, 1871	Los Angeles.
39	San Geronimo	J. W. Revere	8,701.00	Patented April 4, 1860	Marin.
324	San Geronimo	R. Villavicencio	8,893.35	Patented July 10, 1876	San Luis Obispo.
171	San Gregorio	M. C. V. de Rodriguez	13,344.15	Patented February 19, 1861	San Mateo.
172	San Gregorio	Salvador Castro	4,439.31	Patented February 19, 1861	San Mateo.
489	San Jacinto	Heirs of J. A. Estudillo	35,503.03	Patented January 17, 1880	San Diego.
488	San Jacinto y San Gorgonio, tract between	L. Rubideau	4,439.57	Patented August 13, 1872	San Bernardino.
487	San Jacinto Nuevo y Potrero	T. W. Sutherland, guardian	48,861.10	Patented January 9, 1883	San Bernardino and San Diego.
500	San Joaquin	José Sepulveda	48,803.16	Patented September 19, 1867	Los Angeles.
232	San Joaquin	C. Cervantes	7,424.69	Patented January 6, 1874	San Benito.
458	San José	Dalton, Palomares & Vejar	22,340.41	Patented January 20, 1875	Los Angeles.
457	San José, addition to	Dalton, Palomares & Vejar	4,430.64	Patented December 4, 1875	Los Angeles.
45	San José	Ygnacio Pacheco	6,659.25	Patented January 14, 1861	Marin.
179	San José, pueblo lands	City of San José	55,891.77	Patented June 4, 1884	Santa Clara.
431	San José de Buenos Ayres	B. D. Wilson	4,438.69	Patented July 5, 1866	Los Angeles.
----	San José y Sur Chiquito	José Castro	8,876.00	[redacted]	Monterey.
509	San José del Valle	J. J. Warner	26,688.93	Patented January 16, 1880	San Diego.
97	San Juan	Hiram Grimes	19,982.70	Patented July 9, 1860	Sacramento.
185	San Juan Bautista	J. A. Narvaez	8,879.54	Patented December 1, 1865	Santa Clara.

Patented

No. on Gen'l L. O. Map	NAME OF GRANT.	Confirmee.	Area.	Condition of Title.	Where Located.
247	San Juan Bautista, tract near Mission of	M. Larios	4,493.00	Patented August 8, 1870	San Benito.
248	San Juan Bautista, tract near Mission of	P. Breen	401.25	Patented January 22, 1877	San Benito.
473	San Juan Cajon de Santa Ana	J. P. Ontiveros	35,970.92	Patented May 21, 1877	Los Angeles.
378	San Julian	J. de la G. y Noriega	48,221.68	Patented September 29, 1873	Santa Barbara.
238	San Justo	F. P. Pacheco	34,619.65	Patented December 6, 1865	San Benito.
131	San Leandro	J. J. Estudillo	6,829.58	Patented July 15, 1863	Alameda.
300	San Lorenzo	Rafael Sanchez	48,285.95	Patented December 22, 1870	Monterey and San Benito.
299	San Lorenzo	F. Soberanez	21,884.38	Patented July 28, 1866	Monterey.
302	San Lorenzo	Heirs of A. Randall	22,264.47	Patented June 4, 1870	Monterey.
132	San Lorenzo	Barbara Soto et al.	6,685.85	Patented April 14, 1877	Alameda.
122	San Lorenzo	Guillermo Castro	26,722.52	Patented February 14, 1865	Alameda.
305	San Lucas	James McKinley	8,874.72	Patented February 23, 1872	Monterey.
234	San Luis Gonzaga	J. P. Pacheco	48,821.43	Patented May 16, 1871	Santa Clara and Merced.
----	San Luis Obispo, lot near	J. M. Bonilla	3.85	Sent up for patent Aug. 26, 1882	San Luis Obispo.
327	San Luisito	Guadalupe Cantua	4,389.56	Patented May 18, 1860	San Luis Obispo.
364	San Marcos	N. A. Den et al.	35,573.10	Patented September 6, 1869	Santa Barbara.
149	San Mateo	Ex'rs of W. D. M. Howard	6,438.80	Patented November 18, 1857	San Mateo.
154	San Miguel	J. de J. Noe	4,443.38	Patented March 30, 1857	San Francisco and San Mateo.
394	San Miguel	Olivas & Lorenzana	4,693.91	Patented March 21, 1873	Ventura.
62	San Miguel	Heirs of M. West	6,663.23	Patented June 29, 1865	Sonoma.
335	San Miguelito	Mariana Gonzales	22,135.89	Patented August 8, 1867	Monterey.
309	San Miguelito	Miguel Avila	14,198.20	Patented February 23, 1877	San Luis Obispo.
127	San Pablo	J. Y. Castro	17,938.59	Patented January 31, 1873	Contra Costa.
422	San Pascual	B. D. Wilson	708.57	Patented February 12, 1881	Los Angeles.
415	San Pascual	Manuel Garfias	13,693.93	Patented April 3, 1863	Los Angeles.
----	San Pascual, 2,000 varas near	Juan Gallardo	700.00	Not surveyed	Los Angeles.
440	San Pedro	M. Dominguez et al.	43,119.13	Patented December 18, 1858	Los Angeles.
164	San Pedro	F. Sanchez	8,926.46	Patented November 8, 1870	San Mateo.
----	San Pedro	G. O. de Chapman et al.	4,438.00	In Court on title	Santa Barbara.
44	San Pedro, Santa Margarita, y Las Gallinas	Timothy Murphy	21,678.69	Patented February 21, 1866	Marin.
423	San Rafael	Julio Berdugo et al.	36,403.32	Patented January 28, 1882	Los Angeles.
118	San Ramon	J. M. Amador	16,516.95	Patented March 18, 1865	Contra Costa and Alameda.
117	San Ramon	Leo Norris	4,450.94	Patented July 3, 1882	Contra Costa.

116	San Ramon	H. W. Carpentier	8,917.36	Patented April 7, 1866	Contra Costa.
322	San Simeon	J. M. Gomez	4,468.81	Patented April 1, 1865	San Luis Obispo.
293	San Vicente	C. Munrass et al.	19,979.01	Patented June 29, 1865	Monterey.
195	San Vicente	M. Z. B. Berreyesa et al.	4,438.36	Patented June 24, 1868	Santa Clara.
204	San Vicente	B. A. Escamilla	10,802.60	Patented May 6, 1870	Santa Cruz.
432	San Vicente y Santa Monica	R. Sepulveda	30,259.65	Patented July 23, 1881	Los Angeles.
228	San Ysidro	John Gilroy et al.	4,460.67	Patented September 27, 1867	Santa Clara.
229	San Ysidro	Quintin Ortega	4,438.65	Patented October 22, 1868	Santa Clara.
24	Sanel	Fernando Feliz	17,754.38	Patented December 18, 1860	Mendocino.
93	Sanjon de los Moquelumnes	Heirs of A. Chabolla	35,508.14	Patented May 30, 1865	San Joaquin and Sacramento.
198	Sanjon de Santa Rita	F. Soberanes	48,823.84	Patented November 20, 1862	Fresno and Merced.
388	Santa Ana	C. Ayala et al.	21,522.04	Patented December 22, 1870	Ventura.
477	Santa Ana del Chino	M. M. Williams et al.	22,234.20	Patented February 15, 1869	San Bernardino.
478	Santa Ana del Chino, addition	M. M. Williams et al.	13,336.16	Patented April 29, 1869	San Bernardino.
237	Santa Ana y Quien Sabe	Manuel Larios et al.	48,822.60	Patented May 1, 1860	San Benito.
454	Santa Anita	Henry Dalton	13,319.06	Patented August 9, 1866	Los Angeles.
386	Santa Barbara, pueblo	City of Santa Barbara	17,826.17	Patented May 31, 1872	Santa Barbara.
177	Santa Clara, tract near	J. Enright	710.14	Patented May 1, 1866	Santa Clara.
189	Santa Clara, two tracts near	M. S. Bennett	358.51	Patented July 19, 1871	Santa Clara.
402	Santa Clara del Norte	Juan Sanchez	13,988.91	Patented November 5, 1869	Ventura.
334	Santa Fe, Ranchito de	V. Linares	165.76	Patented August 19, 1866	San Luis Obispo.
463	Santa Gertrudes, part of	T. S. Colima	3,696.23	Patented July 17, 1877	Los Angeles.
466	Santa Gertrudes, part of	McFarland & Downey	17,602.01	Patented August 19, 1870	Los Angeles.
338	Santa Manuela	F. Z. Branch	16,954.83	Patented August 22, 1868	San Luis Obispo.
316	Santa Margarita	Joaquin Estrada	17,734.94	Patented April 9, 1861	San Luis Obispo.
505	Santa Margarita y Las Flores	Pio Pico et al.	133,440.78	Patented March 28, 1879	San Diego.
395	Santa Paula y Saticoy	J. P. Davidson	17,773.33	Patented July 15, 1872	Ventura.
119	Santa Rita	Yountz, administrator	8,894.01	Patented March 18, 1865	Alameda.
371	Santa Rita	J. R. Malo	13,316.05	Patented June 25, 1875	Santa Barbara.
323	Santa Rosa	Julian Estrada	13,183.62	Patented March 18, 1865	San Luis Obispo.
370	Santa Rosa	M. J. O. de Cota et al.	15,525.55	Patented April 30, 1872	Santa Barbara.
493	Santa Rosa	Juan Moreno	47,815.10	Patented October 10, 1872	San Diego.
184	Santa Teresa	Augustin Bernal	9,647.13	Patented March 8, 1867	Santa Clara.
319	Santa Ysabel	Francisco Arce	17,774.12	Patented May 21, 1866	San Luis Obispo.
510	Santa Ysabel	J. J. Ortega et al.	17,719.40	Patented May 14, 1872	San Diego.
474	Santiago de Santa Ana	B. Yorba et al.	78,941.49	Patented December 21, 1883	Los Angeles.
36	Saucelito	W. A. Richardson	19,571.92	Patented August 7, 1879	Marin.
277	Saucito	Wilson et al.	2,211.65	Patented October 7, 1862	Monterey.
5	Saucos	R. H. Thomes	22,212.21	Patented October 14, 1857	Tehama.
264	Sausal	J. P. Leese	10,241.88	Patented September 2, 1859	Monterey.
438	Sausal Redondo	A. I. Abila	22,458.94	Patented March 22, 1875	Los Angeles.
397	Sespe	T. W. Moore et al.	8,880.81	Patented March 14, 1872	Ventura.
215	Shoquel	Martina Castro	1,668.03	Patented March 19, 1860	Santa Cruz.
201	Shoquel Augmentation	Martina Castro	32,702.41	Patented March 19, 1860	Santa Cruz.
485	Sierra, La	Bernardo Yorba	17,786.89	Patented February 4, 1875	San Bernardino.

No. on Gen'l L. O. Map.	NAME OF GRANT.	Confirmee.	Area.	Condition of Title.	Where Located.
484	Sierra, La	Vicenta Sepulvada	17,774.19	Patented April 28, 1877	San Bernardino.
400	Simi	J. de la G. y Noriega	113,009.21	Patented June 29, 1865	Los Angeles and Ventura.
348	Sisquoe	J. B. Huie et al.	35,485.90	Patented August 24, 1866	San Luis Obispo & Santa Barbara.
----	Sobrante, El	J. J. & V. Castro	20,565.42	Patented August 11, 1883	Contra Costa.
486	Sobrante de San Jacinto	M. de R. de Aguirre	48,847.28	Patented October 25, 1867	San Bernardino.
225	Solis	R. Castro et al.	8,875.46	Patented January 18, 1859	Santa Clara.
63	Sonoma, Pueblo	City of Sonoma	6,063.95	Patented March 31, 1880	Sonoma.
71	Sonoma City, lot in	M. G. Vallejo	3.81	Patented April 30, 1866	Sonoma.
54	Sotoyome	Heirs of H. D. Fitch	48,836.51	Patented April 3, 1858	Sonoma.
31	Soulajule, part of	G. N. Cornwall	919.18	Patented January 18, 1879	Marin.
31	Soulajule, part of	L. D. Watkins	1,446.79	Patented January 18, 1879	Marin.
31	Soulajule, part of	M. F. Gormley	2,266.25	Patented January 18, 1879	Marin.
31	Soulajule, part of	P. J. Vasquez	3,774.20	Patented January 18, 1879	Marin.
31	Soulajule, part of	J. S. Braekett	2,492.19	Patented January 18, 1879	Marin.
350	Suey, Rancho de	R. C. de Wilson	48,834.27	Patented August 10, 1865	Santa Barbara & San Luis Obispo.
91	Suisun	A. A. Ritchie	17,754.73	Patented January 17, 1857	Solano.
----	Suisun, part of	J. H. Fine	482.19	Patented December 16, 1882	Solano.
288	Sur, El	J. B. R. Cooper	8,949.05	Patented May 18, 1866	Monterey.
441	Tajauta	E. Abila	3,559.86	Patented January 8, 1873	Los Angeles.
344	Tejon, El	Aguirre & Del Valle	97,616.78	Patented May 9, 1863	Kern.
398	Temaseal	R. de la Cuesta	13,339.07	Patented September 13, 1871	Ventura and Los Angeles.
491	Temecula	Luis Vignes	26,608.94	Patented January 18, 1860	San Diego.
492	Temecula, lands in Valley of	P. Apis	2,233.42	Patented January 8, 1873	San Diego.
349	Tepusquet	A. M. Cota et al.	8,900.75	Patented February 23, 1871	San Luis Obispo & Santa Barbara.
365	Tequepis	A. M. Villa	8,919.00	Patented July 24, 1869	Santa Barbara.
101	Thompson's Rancho	A. B. Tompson	35,532.80	Patented May 18, 1858	San Joaquin and Stanislaus.
359	Tinaquaie	Wm. D. Foxen	8,874.60	Patented June 28, 1872	Santa Barbara.
357	Todos Santos y San Antonio	Heirs of W. E. P. Hartnell	20,772.17	Patented December 20, 1876	Santa Barbara.
90	Tolenas	J. F. Armijo	13,315.93	Patented October 12, 1868	Solano.
38	Tomales y Baulenes	Rafael Garcia	9,467.77	Patented October 15, 1883	Marin.
37	Tomales y Baulenes	Bethuel Phelps	13,644.66	Patented February 27, 1866	Marin.
433	Topanga Malibu Sequit	M. Keller	13,315.70	Patented August 29, 1872	Los Angeles.
275	Toro, El	Charles Walters	5,668.41	Patented October 7, 1862	Monterey.
497	Trabueo	Juan Forster	22,184.47	Patented August 6, 1866	Los Angeles.
211	Tres Ojos de Agua	Nicolas Dodero	176.03	Patented June 7, 1866	Santa Cruz.
259	Tucho, El	David Jacks	399.57	Patented July 30, 1867	Monterey.

413	Tojunga	D. W. Alexander et al.	6,660.71	Patented October 19, 1874	Los Angeles.
291	Tularcitos	Heirs of R. Gomez	26,581.34	Patented March 12, 1866	Monterey.
137	Tulareitos, Los	José Higuera	4,394.35	Patented July 8, 1870	Santa Clara.
75	Tulueay	C. Juarez	8,865.58	Patented January 31, 1861	Napa.
260	Two Suertes	Gregory & Williams	37.69	Patented June 20, 1872	Monterey.
55	Tzabaco	Heirs of J. G. Piña	15,439.32	Patented November 19, 1859	Sonoma.
143	Ulistac	Heirs of J. D. Hoppe	2,217.09	Patented October 12, 1868	Santa Clara.
92	Ulpinos, Los	John Bidwell	17,726.43	Patented August 9, 1866	Solano.
200	Uvas, Las	M. J. C. Murphy	11,079.93	Patented February 18, 1860	Santa Clara.
517	Valleeitos de San Mareos	Lorenzo Soto	8,975.17	Patented March 1, 1883	San Diego.
514	Valle de Pamo or Santa Maria	J. J. Ortega et al.	17,708.85	Patented July 30, 1872	San Diego.
511	Valle de San Felipe	Juan Forster	9,972.08	Patented August 6, 1866	San Diego.
121	Valle de San José	Suñol & Bernal	48,435.92	Patented Mareh 15, 1865	Alameda.
508	Valle de San José	S. de la Portilla	17,634.06	Patented January 10, 1880	San Diego.
222	Vega del Rio del Pajaro	F. A. MeDougal et al.	4,310.29	Patented January 18, 1864	Monterey.
249	Vergeles, Los	James Stokes	8,759.82	Patented April 3, 1875	Monterey and San Benito.
545	Virgenes, Las	M. A. Maehado	8,885.04	Patented September 5, 1883	Los Angeles.
77	Yajome	Salvador Vallejo	6,652.58	Patented September 16, 1864	Napa.
183	Yerba Buena or Soeayre	Antonio Chabolla	24,331.69	Patented January 3, 1859	Santa Clara.
23	Yokaya	C. Juarez	35,541.33	Patented Mareh 8, 1867	Mendoeino.
361	Zaca, La	M. A. de la G. y Lataillade	4,458.10	Patented August 23, 1876	Santa Barbara.
271	Zanjones	M. Malarin, exeeutor	6,714.49	Patented August 9, 1866	Monterey.
203	Zayanta	Isaae Graham et al.	2,658.21	Patented August 19, 1870	Santa Cruz.

4

Before the Committee on Public Lands.

IN THE MATTER OF THE SURVEY

OF THE

RANCHO CORTE DE MADERA DEL PRESIDIO.

BRIEF ON THE LAWS OF MEXICO

IN RELATION TO THE

Salt Marsh and Tide Lands, applicable to Private Land Grants.

BY

J. W. DENVER & A. ST. C. DENVER,

Counsel of Grantees from the State.

JUDD & DETWEILER, Printers.

Before the Committee on Public Lands.

Brief on the Laws of Mexico in regard to Salt Marsh and Tide Lands, applicable to the Survey of the Rancho Corte de Madera del Presidio.

The State of California claims all of the salt marsh lands and lands flowed by the tides, by virtue of her State sovereignty.

The laws of Mexico, published in 1839, by Juan N. Rodriquez, sets forth what lands may be granted, and what was inalienable, but retained by the government.

In Partida Third, IV, title XXVIII, it is said:

"All that place is called sea beach which is covered by the waters of the sea when at its highest point during all the year, whether in winter or summer."

The laws of Partidas will be found in Volume 3, pages 316 and 317 of said Code, and the law 15 of Partidas 5 in Volume 2, page 581.

In the civil code of Mexico these lands were not subject to grant or other alienation, but designated as property belonging to the public and nation, as follows:

Article 802 of the civil code of Mexico—

"*First.* The shores of the sea, it being understood by such those parts of the land which the water covers in its greatest ordinary flux.

"*Second.* The ports, bays, roadsteads, and gulfs.

"*Third.* The rivers, although they may not be navigable, their beds, mouths, and their salt marshes."

These laws were all in full force at the date of the grant

182466

to Read, and continued in force until the cession of the territory to the United States.

The civil law prevailed at the date of the grant, and under that law the *shore* included the land as far as the greatest wave extended in winter.

Inst. L. 2, T. 1, § 3, Bouvier's Law Dictionary, Vol. 2, p. 502.

The civil code of Louisiana, Article 442, defines the "seashore is that space of land over which the waters of the sea are spread in the highest water during the winter season."

Angell on Tide-waters says: "High-water mark (under the civil law) is determined by the highest tides, and the shore, it is understood, includes the land as far as the greatest wave extends itself in winter."

Angell on Tide-waters, page 73, says:

"The rule as to ordinary high-water mark applies as well to the shore of an arm of the sea, wherever the tide flows and reflows, as to the sea itself."

"And an arm of the sea is considered as extending as far into the interior of a country as the water of fresh rivers is propelled backward by the ingress and pressure of the tide."

In the case of The City of Mobile *vs.* Eslava (16 Peters, 234), the Supreme Court held that, prior to the cession, all lands flowed by the tides belonged to the sovereign; that the United States acquired the title to them by the treaty, and that upon the admission of Alabama into the Union the title to all such lands passed to the State as a part of her sovereign rights.

In the case of Pollard's Lessee *vs.* Hagan (3 Howard, 219), the Supreme Court held that the patent issued by the United States for lands which were covered by the high tides at the time the State of Alabama was admitted into the Union was void; that where the premises were below usual high-water mark at the date of the admission of the State the United

States could give no title, whether the waters had receded by the labor of man only or by alluvion (p. 220); that when Alabama was admitted into the Union she succeeded to all the rights of sovereignty, jurisdiction, and eminent domain which was possessed by Georgia at the date of the cession, except so far as this right was diminished by the public lands remaining under the control of the United States for the temporary purposes provided for in the cession (p. 223); that "this right of eminent domain over the shores and the soils under the navigable waters, for all municipal purposes, belongs exclusively to the States within their respective territorial jurisdictions, and they, and they only, have the constitutional power to exercise it. To give to the United States the right to transfer to a citizen the title to the shores and soils under the navigable waters would be placing in their hands a weapon which might be wielded greatly to the injury of State sovereignty, and deprive the States of the power to exercise a numerous and important class of police powers."

The court then states its conclusions as follows:

"*First.* The shores of navigable waters and the soils under them were not granted by the Constitution to the United States, but were reserved to the States respectively.

"*Secondly.* The new States have the same rights, sovereignty, and jurisdiction over this subject as the original States.

"*Thirdly.* The right of the United States to the public lands, and the power of Congress to make all needful rules and regulations for the sale and disposition thereof, conferred no power to grant to the plaintiffs the land in controversy in this case." (P. 230.)

This decision was expressly reaffirmed in the cases of Goodlittle *vs* Kibbe, 9 H., 471, and Doe *vs.* Beebe, 13 H., 25. It has never been overruled, but has ever since stood as the recognized and settled law upon these questions.

In a very recent case—Woodruff *vs.* The North Bloomfield Mining Company—decided by Judges Sawyer and Deady, in the United States circuit court for California, these decisions are all reaffirmed as the settled law.

It is shown that the laws of Mexico prohibited the granting of any lands which were covered by the tide at its greatest flux, or any of the salt marshes; that the shores of the sea, bays, estuaries, and rivers were reserved to the nation and could not be granted; and that the civil law prevailed at the date of the grant and the cession of the territory to the United States.

The treaty of Guadaloupe-Hidalgo guaranteed to the owners of property only such rights as they held under the Mexican laws, and did not authorize any extension of such rights and titles to land. Where the shores of the sea, bays, rivers, or estuaries were designated as boundaries under the Mexican law, such boundaries were the lines where the highest tides reached in the winter. All the lands below these lines, within the boundaries of the State, belonged to the State by virtue of her sovereign rights the moment she was admitted into the Union, September 9, 1850.

In addition to this, on September 28, 1850, (9 Stat. 519,) Congress passed an act granting to the State all of the swamp and overflowed lands within her limits.

The act of March 3, 1851, (9 Stat., 631,) created the Board of Land Commissioners to ascertain and settle the title to private land claims in California. The 11th section of said act provides: "That the Commissioners hereinafter provided for, and the district and supreme courts, in deciding on the validity of any claim brought before them under the provisions of this act, shall be governed by the treaty of Guadaloupe-Hidalgo, the law of nations, the laws, usages, and customs of the Government from which the claim is derived, the principles of equity, and the decisions of the Supreme Court, so far as they are applicable."

When, therefore, a decree was made by the Board or the

courts confirming the validity of a claim, and the boundaries described by the decree was the sea-shore, the shores of the bays or estuaries, or the shore of a river affected by the tides, such boundary was confined to the high-water line defined by the civil law existing when the grant was made. That would be following "*the laws, usages, and customs of the Government from which the claim is derived.*" Neither the Commissioners nor the courts had any power or authority to confirm to any claimant any land not granted, or which, by the laws of Mexico, could not be granted. These laws prohibited any grant being made for any salt marsh lands or lands covered by the tides at the greatest flux in the summer or winter.

Where the grant was confirmed for a certain quantity, and the boundaries named included a larger quantity, then the survey shall be made for the quantity confirmed within the out boundaries, and the surplus shall be public lands of of the United States.

In the case of Higueras *vs.* The United States, (5 Wallace, 827,) the court held that Mexican grants or concessions are of three kinds—1st. Grants by specific boundaries, where the donee is entitled to the entire tract described; 2d. Grants by quantity within a larger tract, where the donee is entitled to that quantity and no more; 3d. Grants of a certain rancho by name, where the donee is entitled to the tract by boundaries, if given, or if not, according to the limits of his possession and settlement, (p. 834.)

The Court further held that: "Confirmation alone, however, did not, under that act, (act of March 3, 1851,) confer upon the claimant a right to a patent, but it was made the duty of the surveyor-general to cause all private land claims finally confirmed to be accurately surveyed, and to furnish plats of the same," (p. 830.)

In the case of Hornsby *vs.* The United States, (10 Wallace, 224,) the Supreme Court again classed the grants as of three kinds, as set forth in the case of Higueras. The Court says

that grants of the second class—those for quantity—passed from the Government to the grantees, upon their execution, the right to the quantity of land specified therein, to be afterwards laid off by official authority at the place, or within, the larger tract granted; that the measurement of the land by the officers of the Mexican Government was a segregation of the quantity granted from the public domain.

In the case of Rutherford *vs.* Greene's Heirs, (2 Wheaton, 196,) the Court held that when the 25,000 acres of land donated to General Greene by the act of the Legislature of North Carolina, in 1782, within the boundaries of a large tract reserved for the use of the army, had been surveyed, such survey gave precision to the title, and segregated that particular tract from the public domain.

The same ruling was made in the case of Lessieur *vs.* Price, (12 Howard, 59.)

The grant was made to Read for one square league of land and the concession required that a juridical measurement should be made of the quantity granted, and the surplus remaining should be reserved for the public use as the nation saw fit.

The magistrate of the district made the juridical measurement of the one square league granted to Read, and all that was claimed by him, and thus segregated his land from the public domain, and the surplus remaining was public lands of the Mexican Government, and, by the cession of the territory, became public lands of the United States.

This survey and segregation made by the Mexican authorities fixed the quantity and boundaries of the grant, and it was the duty of the confirmees to exhibit these lines to the United States surveyor when he made the survey to re-establish the lines. Neither the land commissioners nor the district court confirmed to the heirs any other or more land than the one square league that had been surveyed and segregated by the former Government; nor had either any power to do so. Any attempt on the part of the con-

firmees, or any party claiming under them, to lay claim to any lands outside of the lines of one league, as fixed by the Mexican survey, is an effort to defraud the government out of a portion of her public lands, and a wrong towards honest settlers thereon.

The Interior Department has no authority of law to issue a patent for any private land grant, except upon the lines described by an official survey actually made in the field by a United States surveyor. The only survey every made in the field by a United States surveyor, of this grant, was the one made by Matthewson in 1858. All the other plats were mere office work, made by protraction, and do not comply with any law ever in force.

The Secretary of the Interior has no authority to make grants of the public lands, and issue patents therefor, either directly or indirectly. Yet by his recent decision in this case he undertakes to do it in fact. He not only assumes the right to direct a patent shall issue to the confirmees for the one square league granted, measured, and confirmed to Read and his heirs, but directs that the additional quantity of 1,594 acres of public lands of the United States, 328 acres of military reservation lands, $29\frac{47}{100}$ acres already sold as public lands, and patented by the United States, and 1,474 acres of salt marsh, and tide lands, owned by the State of California, shall be given to the confirmees, or parties claiming under them.

As already shown, the Supreme Court of the United States has uniformly and often decided that the United States can give no title to lands flowed by the tides or the sea shore, but that the title to such lands belongs to the State. The proposed action of the Secretary is in clear violation of and in conflict with the settled law upon this question. If he should carry out his proposed action, it would lead to endless litigation and great injury to the State and those who hold title under her.

It is, therefore, submitted that, when it is evident that an

officer of the Government assumes the right to perform an act which is not clearly authorized by law, and by which the Government and other parties will be seriously and improperly injured, it becomes the duty of Congress to interpose and prevent the consummation of such wrong. Congress should protect her rights to the public lands and the rights of settlers thereon; protect the titles to her military reservations; protect the titles issued by the Government to purchasers of her public lands; and prohibit any action which would cast a cloud on the titles given by the State for lands that belonged to her in her sovereign right.

As all efforts elsewhere have proved fruitless, this appeal is made to Congress to pass some act to prevent the consummation of the wrongs complained of, and thus confine the survey and patent to the quantity named in the grant; that is, to one square league.

J. W. Denver,
A. St. C. Denver,
Counsel for Grantees from the State.

c333

5

BEFORE THE

Secretary of the Interior,

IN THE MATTER OF

The Survey of the Rancho Corte de Madera del Presidio.

PETITION OF PETER GARDNER ET AL. FOR RE-HEARING.

J. W. DENVER,
A. ST. C. DENVER,
Attorneys for Petitioners.

Judd & Detweiler, Printers.

Department of the Interior.

IN THE MATTER OF THE SURVEY OF THE RANCHO CORTE DE MADERA DEL PRESIDIO.

Peter Gardner, on behalf of himself, Edwin Gardner, Israel Kershaw, C. E. Christianson, J. S. Barrett, E. A. Dulip, Wm. Richardson, and others, respectfully ask the Honorable Secretary of the Interior, to re-open the decision and proceedings in this case, and that they be granted permission to appear as parties contestant, and they be given a hearing.

The petitioners are the owners of certain tracts of land known as marsh lands, purchased by them from the State of California, and for which they hold patents from said State, and Wm. Richardson, also, has a patent from the United States.

In 1858, Deputy Surveyor R. C. Matthewson, made a survey of the land granted, which was duly approved by Surveyor-General Mandeville, on September 19, 1859. Upon the passage of the act of June 14, 1860, this survey was duly advertised for the period required by the first section of said act, and no objection was made to this survey by any person to the Surveyor-General.

On September 13, 1860, the district court for the northern district of California, ordered the survey into court, and on December 22, 1860, the grant claimants filed exceptions to it.

These exceptions did not affect, in any manner, the lands of your petitioners. The lines claimed by the owners of

the grant, expressly excluded all the marsh and tide lands. Among the exhibits filed with the objections to the Mathewson survey, before the district court, was a plat of survey made by C. C. Tracy, at the request of the confirmees, or parties claiming under them, showing the exact lines of the boundaries they claimed. This plat, as well as the Mathewson survey, excluded all the marsh and tide lands.

The district court overruled the objections, and on September 28, 1865, approved the Matthewson survey; but, on October 24, 1865, the court set aside and annulled this decree, and dismissed all proceedings for want of jurisdiction over the survey. No appeal was taken from this decision of the court, nor did the court remit the case to the Surveyor-General, but, in 1868, the Surveyor-General published the survey under the provisions of the act of July 1, 1864.

On the 89th day after first publication, objections to the survey were filed with the Surveyor-General on behalf of the confirmees. These were the same as the objections filed in the district court. The grant claimants made no pretense of claim to the marsh and tide lands, and appealed to the Tracy plat for the lines of the lands they claimed. As neither the official survey of Matthewson, nor the plat of Tracy, included the marsh and tide lands, and no claim was made for them by the grant owners, your petitioners could not object to the survey, because their interests in such tide and marsh lands were in no manner affected by the survey or claims of the grant owners. But other parties residing upon and claiming portions of the land outside of the Matthewson survey as public lands, but which the grant owners now claimed should be included in the survey, did appear as protestants, and were recognized as contestants for these lands before the Commissioner, and subsequently before the Secretary (Delano), without objection by the confirmees, or any others.

The case came up before the Commissioner of the Gene-

ral Land Office, who, on May 6, 1871, approved the Matthewson survey.

From this decision an appeal was taken on behalf of the confirmees to the Secretary (Delano); and on January 6th, 1872, he reversed the decision of the Commissioner, disapproved the Matthewson survey, and ordered the Commissioner to "direct another to be made conforming to the juridical possession." The Secretary refers to the opinion of the Assistant Attorney-General of December 26, 1871, for his conclusions of the law and facts involved in the case. The conclusions of the Assistant Attorney-General were: "I therefore recommend that the decision of the Commissioner be reversed, and that the Surveyor-General be directed to make another survey, including the lands within the boundaries particularly described in the decree of the district court, by reference to the confirmation by the board of commissioners, being the land covered by the juridical possession of the original claimant, Read."

In pursuance of the decision of Secretary Delano, and his order to the Commissioner to direct that a new survey "*be made conforming to the juridical possession*," on February 5, 1872, Commissioner Drummond ordered the Surveyor-General to make a new survey, to commence at the point designated as the starting point (Solar) in the act of juridical possession; thence north to the Arroyo Holon; thence southeasterly to Point Tiburon near course 24 of the Matthewson survey; thence southwesterly to a point near course 105 of said survey; and thence easterly to the place of beginning. These are substantially the substance of the order to the Surveyor-General.

The following are the instructions to the U. S. Surveyor-General of California:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *February 5th*, 1872.

J. R. HARDENBURGH, Esq.,
U. S. Surveyor-General, San Francisco, Cal.

SIR: I enclose herewith a copy of our opinion, dated 26th December last, by the Hon. Assistant Attorney-General, and copy of an opinion, dated the 6th ultimo, by the Hon. Secretary of the Interior in the matter of the survey of the rancho Corte de Madera del Presidio, in California, heirs of Juan Reid, confirmees; and in obedience to said decision by the Hon. Secretary, you are hereby directed to cause a new survey of said rancho to be made at the expense of the parties in interest, which will conform to the juridical possession, after which you will cause it to be published according to law, and make the usual return to this office.

The places from which juridical measurement commenced and to which it extended to the north are so accurately described by natural objects that it is believed no difficulty will be experienced in locating the western boundary of the rancho; but with respect to the line run from the Arroyo Holon to the place called Taburon, I submit the following suggestions:

The place called Point Taburon is not clearly described, either in the grant or record of juridical possession. The grant simply mentions it as one of the boundaries of the rancho Corte de Madera del Presidio, the other boundaries being the mission of San Rafael and the port of San Francisco. The record of juridical possession is no more explicit. One of the witnesses therein mentioned states that the rancho has for boundary, "on the east, Point Taburon;" another, that it has for boundary, "on the east, Point Taburon, which is in front of the island called Los Angeles;" and a third states that the boundary on the east terminates "in said Point Taburon."

The record also shows that the Alcalde and accompanying witnesses, in viewing the rancho, went to the Arroyo Holon, and from that place continued south "as far as point Taburon," which the witnesses "said was the limit in that direction," and also that the same Alcalde caused to be measured from the Arroyo Holon as follows: "taking a direction from north to south, the measurement was con-

tinued to Point Taburon " " two hundred cordals " (4 miles 16 chs.) " said point serving as a mark and limit."

This description of Point Taburon is ambiguous in that it supports either of two hypotheses; first that Point Taburon was a small projection of land, such as U. S. Deputy Surveyor Mathewson seems to have considered it; and second, that the name " point Taburon " as used in the record of juridical possession described generally the entire body of land bounded by San Francisco and Sausalito bays and by a line running northeasterly from near meander course 105 to near meander course 24, as said courses are marked on the plat of Mathewson's survey, executed in 1858.

From the data before me, I am inclined to the opinion that the second hypothesis is the correct one in this case, and that the juridicial survey terminated at some point in a line drawn directly across from course to course, as above stated. This construction of the words used in the record of juridicial proceedings will harmonize the measurements stated to have been made from Holon to Taburon, and from Taburon to the place of beginning, with the actual distances between those places.

Upon the inclosed diagram the dotted blue lines represent, approximately, the eastern boundary of the rancho Corte de Madera del Presidio, according to the second hypothesis heretofore stated.

Very respectfully,

WILLIS DRUMMOND,
Commissioner.

There can be no doubt, and it can be substantiated by proof, that Commissioner Drummond submitted the instructions contained in his letter of February 5, 1872, to Secretary Delano and Assistant Attorney General Smith, and that said officers approved them, prior to being signed by the Commissioner, and they thereby became the construction intended to be placed by Secretary Delano upon his decision by himself, and shows what he intended it to mean.

These instructions also ordered the new survey to be published. It was apparent that the new survey would embrace lands settled on and claimed by other parties, who

were not affected by the Matthewson survey, and the order of publication was made in order that such parties might have an opportunity to defend any rights they might have in the new proceeding. The order to publish the survey was certainly within the discretion of the Department. The first section of the act of July 1, 1864, authorizes the Commissioner, in his discretion, to order a new survey and plat to be made. The new survey in this case was ordered upon the application and representations of the confirmees, or those claiming under them, and it became substantially a new proceeding, in so far as it conflicted with the rights claimed by other parties who were not affected by the first or Matthewson survey. It was but an act of justice that such new survey, when made, should be published, in order that these new parties should have an opportunity to be heard and show their rights, and endeavor to have the lines confined to those of the juridical measurement, as ordered by Secretary Delano.

In September and October, 1873, Deputy Surveyor Ransom made a new plat of the lands claimed by the confirmees and returned it to the Surveyor General as his official act, which survey contained 6,033 acres. This plat excluded the islands and marsh and tide lands.

Ransom also made a plat, as a private exhibit, showing the lands claimed by Thomas B. Valentine and others claiming to be the assignees of the confirmees, which included Peninsula and other islands and the marsh and tide lands, containing 7,863 acres of land. Shortly after this Ransom died. This plat was never approved by Ransom as an official plat.

On May 8, 1874, the Surveyor General instructed G. F. Allardt to run the line of the 6,033-acre plat from the point designated as the *solar* or starting point to the Arroyo Holon, and nothing else, and this was the only surveyed line made of the new plat.

No new survey has been made as ordered by the Com-

missioner and required by the decision of Secretary Delano as well as the act of July 1, 1864, for any part of the grant except the western line. Ransom merely compiled a plat from other surveys for part of the tract, and from State surveys made of the marsh and tide lands, which surveys are no part of the official records of the Land Department. Neither did Ransom follow the instructions of the Commissioner and the decision of Secretary Delano in following the courses of the juridical measurement. He was ordered to commence the survey at the point designated as the *Solar*, (being the southwest corner of the tract,) thence to run the line *north* to the Arroyo Holon. But instead of carrying out these instructions he commenced his plat at the *Solar*, and then runs due *south;* thence *south* 33½° east; thence *south* 39° east; thence *south* 41° east; thence *south* 64° east, and so on—thus disregarding all the calls of the grant, decree, and instructions; thus tending to confuse and misconstrue what he was ordered to do.

The official plat he returned, however, excluded all the marsh and tide lands, Peninsula and other islands, as well as Richardson's island, which had been patented as public lands of the United States on February 10, 1872, a little over one month subsequent to the date of Secretary Delano's decision, and only five days after the date of Commissioner Drummond's letter of instructions for the new survey, without objection from any quarter.

The reported plat of survey of Ransom and Allardt was published by Surveyor General Stratton in February and March, 1875, and objections were filed by several parties. Among other objections set up were those of the confirmees, or Valentine, wherein the claim was set up for the first time to the tide and marsh lands and all the adjacent lands therein. After a full hearing Surveyor General Stratton approved the plat, but he did not report the case to the Commissioner during his term of office, which terminated shortly after.

On August 12, 1865, seven years after the Matthewson

survey had been made, and long after the lands embraced therein had been partitioned among the confirmees, a speculator named James C. Bolton made a contract with them in which he undertook to procure more land, but not to disturb their rights to those within the lines of said survey. The only consideration for this was that they should have one-half of the surplus lands he might obtain.

CERTIFIED COPY AGREEMENT.

James C. Bolton with John J. Read, et al., August 12, 1865.

(*Prior to any Dissatisfaction between Parties.*)

Whereas, John J. Reed, Hilaria M. Reed, Thomas B. Deffebach, and Ines Deffebach, his wife, have this day executed and delivered to me a deed of the undivided one-half part of all the Rancho "Corte Madera del Presidio," situated in the county of Marin, in the State of California, *which is not included in the Survey of the said Rancho*, which was made under instructions from the United States Surveyor General for the State of California by R. C. Mathewson, deputy Surveyor, in October, 1858, and approved by J. W. Mandeville, United States Surveyor General for California, September 19, 1859, said approved survey containing four thousand four hundred and sixty 24-100 (4,460 24-100) acres of land. The said Rancho being the same which was granted to Juan Reed by the Mexican Government. Now, therefore, in consideration of the execution and delivery of said Deed, I hereby *agree with them* to give my professional services before the courts of the United States and the proper authorities at Washington, and to use my best endeavors to procure a patent from them, the United States Government, for all the land included in the grant from the Mexican Government of the said Rancho without any expense or charge whatever to them. Excepting the expenses of a new survey of said land, (which they themelves are to pay,) *and in case I shall fail to obtain a patent for more than is included in the above-mentioned approved Survey*, then I shall procure for them, free of all charges, a patent for the land included in said approved Survey.

In witness whereof I have hereunto set my hand and seal

at the city of San Francisco, this twelfth day of August, A. D., eighteen hundred and sixty-five.

50 cent U. S. Revenue Stamp cancelled.

JAMES CLINTON BOLTON, [SEAL.]

In presence of ATKINSON HOLROMBE.

On July 25, 1868, said Bolton sold what interest he had to Thomas B. Valentine, who testified before the Surveyor General, on November 16, 1875, that his occupation was "speculator."

In all the proceedings in this case the confirmees have disclaimed that they ever had any interest in or claim to the tide and marsh lands. All the claims set up for them as being part of the grant have been made solely by said Valentine, and he first made the claim before Surveyor-General Stratton in 1875, and it is from this source that all these prolonged contests have arisen.

In the proceedings before Surveyor General Stratton you will find the first instance wherein any pretence of claim was set up for the marsh and tide lands, and that was made solely by Valentine, against the protest of the confirmees themselves.

Subsequent to the approval of the Ransom-Allardt plat by Surveyor General Stratton, a large amount of evidence was taken in behalf of several parties, by the Surveyor General and his successor in office, H. G. Rollins.

In April, 1877, Surveyor General Rollins forwarded the plat to the Commissioner, with a report that *he* did not approve the official plat already approved by his predecessor, and gave as his opinion that the plat should have included the marsh and tide lands and adjacent islands. He also forwarded the unofficial plat filed as an exhibit, and stated that he thought it should have been published instead of the one approved by Surveyor General Stratton. This plat was not made as an official paper, although you

treat it as such, and really by mistake have considered it as the official survey.

The case then came before Commissioner Williamson, who, on September 18, 1878, made a decision, in which he entirely ignored the decision of Secretary Delano, treated the case as an original proceeding, and decided that the Ransom-Allardt official plat should be amended so as to include all the marsh and tide lands and adjacent islands, including Peninsula island.

On December 23, 1878, the Secretary of War referred the matter of Commissioner Williamson's decision to the Attorney General of the United States, with a request that he would examine the papers, and if he deemed it expedient, to cause an appeal to be taken from said decision to the Secretary.

On January 31, 1879, the Attorney-General suggested to the Secretary of War that it would be advisable for him to apply to the Secretary of the Interior, to obtain a reference by him of the case to the Attorney General for his opinion.

Subsequently the Secretary of War referred the matter to the Attorney-General, and asked for his opinion in regard to the title to Peninsula island and adjacent islands, and on July 19, 1879, the Attorney General gave an elaborate opinion covering the entire case, to which we make special reference. He shows clearly where the lines should run to carry out the decision of Secretary Delano, and these lines exclude all the lands claimed by your petitioner.

Prior to forwarding the papers to the Secretary, and after the appeals had been perfected by the various appellants, and the case was legally beyond any further action of the Commissioner, on April 3, 1879, the attorneys for the confirmees, and Valentine filed a motion asking him to dismiss all appeals taken by parties who did not object to the Matthewson survey. No notice was ever given to all the appellants of this proceeding, but on April 15th the Commissioner submitted the matter to the Secretary for his con-

sideration. On May 28, 1879, Secretary Schurz gave what he calls an advisory opinion that none but those who objected to the Matthewson survey under the publication of 1868, or persons claiming under them had the right to appear as contestants, and that all others could appear only as *amicus curiæ*. He closed by saying, "The views expressed in this opinion are advisory simply. The case is not before me for decision, and hence I cannot dismiss any appeals filed in it, neither can I order any papers to be stricken from the files of the case."

Acting upon this advisory opinion, Commissioner Williamson assumed the right to dismiss all the appeals taken except those of the confirmees and Valentine, and forwarded the other papers to the Secretary.

On December 31, 1879, Secretary Schurz decided the case, reversed the decision of the Commissioner, and ordered a new survey to be made. He held:

1st. That the decision of Secretary Delano was final.

2d. That no new survey had been made as required by said decision.

3d. That the Ransom-Allardt plat as returned was not that of a survey, and did not conform to the lines named in the decision of Secretary Delano, but embraced lands not in the grant, and which should be excluded from the survey.

4th. He ordered the lines of the new survey to be run substantially as directed in the instructions of Commissioner Drummond, of February 5, 1872, except as to the northern lines, which he erroneously supposed was the lines that had been before Secretary Delano, and considered by him.

The marsh and tide lands, as shown on the Matthewson survey, and also on the Tracy plat, as filed by the confirmees, to show the lines of the out-boundaries of what they claimed, both exclude the marsh and tide lands. These were the plats before Secretary Delano, and which he considered as excluding these lands. If his decision was final, then the northern line of the new survey was intended by him to

exclude the marsh and tide lands. It is evident that Secretary Schurz inadvertently supposed these marsh lands were included within the out-boundaries of the grant as shown on the plats and surveys under consideration by Secretary Delano. The out-boundaries of the grant presented to and considered by Secretary Delano—and the lands within these lines were the only ones considered by him—show that the confirmees, and Bolton did not claim that the lines extended further north than Bickerstaff's house, on the edge of the marsh, and then followed the borders of the marsh eastwardly, excluding entirely all the marsh and tide lands. These were the limits of the boundaries on the north considered by Secretary Delano, and any new survey should not extend beyond these lines.

The confirmees, or rather Valentine, applied to the Secretary for a reconsideration of his decision of December 31, 1879. And on May 3d, 1880, he, after hearing arguments, re-affirmed his former decision, and directed where the east line of the survey should be located by the new survey.

While this motion was pending before the Secretary, the confirmees or Valentine appealed to Congress to pass a bill directing a patent to be issued upon the unofficial survey or plat made by Ransom-Alardt, containing 7,863 acres, being the one now pending before your office. (See Senate bill No. 1571, and H. R. bill No. 5545, 2d Sess. 46th Congress.)

While this was pending before Congress, it appears, or is so stated in your decision, that Secretary Schurz, on May 25th, 1880, gave a verbal direction to the Commissioner to suspend the execution of his decision. This is the usual course pursued in the Department when a matter affecting any question before it is pending in Congress, in order that action may stand suspended until the legislative department shall have time to investigate the matter and act thereon.

You say in your decision of July 23, 1882, in regard to the decision and action of Secretary Schurz: "And it appears that he must have doubted the propriety of proceeding under his own decision, even after he had in form denied a review, for he suspended the execution of the order for survey, and finally left the whole question open by his endorsements already cited."

Your petitioners have already stated the reasons why such suspension was made,—that it was because the confirmees and Valentine had appealed to Congress, and the the Secretary, out of due respect to that branch of the Government, did, as was the usual custom of your Department, suspend action until the legislative branch of the Government had disposed of the matter, and *not* on account of any doubts as to the correctness of his decision.

On January 19, 1881, Senator Edmunds, from the Committee on Private Land Claims of the Senate, made Report No. 767 (3d Sess. 46th Congress) upon the bill before said committee, wherein the committee says: "The bill ought not to pass." The report further says: "It is contended by the claimants that the first decision of the Secretary of the Interior, refusing to approve the first survey under the decree, and sending the matter back for a re-survey in conformity with his opinion, is conclusive, and establishes the right of the claimants to the whole amount of land within the aforesaid external limits; but the committee are of opinion that such is not the law, and that if the matter be one properly the subject of Congressional cognizance, the first report of the Surveyor General of California was correct."

This is the opinion of such learned and able men as Senators Edmunds, Allison, Windom, David Davis, and Jonas, who composed that committee—all able lawyers, and one of them (Senator Davis) had been for many years on the bench of the Supreme Court of the United States. All of them were familiar with such questions.

Your petitioners respectfully invite your particular attention to said bill and report, which are here presented.

46th CONGRESS, 2d SESSION. S. 1571.

IN THE SENATE OF THE UNITED STATES.

APRIL 1, 1880.

Mr. BOOTH asked and, by unanimous consent, obtained leave to bring in the following bill; which was read twice and referred to the Committee on Private Land-Claims.

A BILL

For the relief of the heirs of Juan Read.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a patent be issued to the heirs of Juan Read, for the rancho Corte de Madera del Presidio, upon a survey made in pursuance of the final decision of the Secretary of the Interior, dated the sixth day of January, eighteen hundred and seventy-two.

46TH CONGRESS, *3d Session.* SENATE. REPORT No. 767.

IN THE SENATE OF THE UNITED STATES.

JANUARY 19, 1881.—Ordered to be printed.

Mr. EDMUNDS, from the Committee on Private Land Claims, submitted the following

REPORT:

[To accompany bill S. 1571.]

The Committee on Private Land Claims, to whom was referred the bill (S. 1571) for the relief of the heirs of Juan Read, respectfully report:

That they have considered the same, and are of opinion that the bill ought not to pass.

The claim arises under a decree of the district court of the United States for the northern district of California, made at its January term, 1856, on appeal from the board of California land commissioners. The original claim was under a Mexican grant which fell within the jurisdiction of the aforesaid board of land commissioners, and, on appeal, within that of the district court. The decree of the district court was not appealed from, and was therefore final, and must be held to have fixed the rights of the claimants. The question of the extent of the grant confirmed by the decree, then, is purely a question of law, which the committee are of opinion that the judicial courts, in case of dispute, should decide. If this were not so, and it were the duty of Congress to construe and apply the decree, the committee are of opinion that the decree only affirms to the claimants one square league of land, and no more, within the external boundaries mentioned in the original claim and in the decision of the land commissioners.

It appears that under this decree the Surveyor General of California proceeded to locate and survey the land, and he held that the decree confirmed to the claimants only one square league of land, and made his survey accordingly, and reported the same to the Commissioner of the General Land Office. The Commissioner of the General Land Office was of opinion, on that report, that only one square league of land was confirmed, but the then Secretary of the Interior was of opinion that the whole land within the external limits of the description was confirmed to the claimants by the force of the decree, and directed, by letter of the 6th of January, 1872, the Commissioner of the General Land Office to cause another survey to be made under the decree, covering all the land within the external limits mentioned. That survey was made and returned to the General Land Office, when the then Secretary of the Interior decided that the original report of the Surveyor General and the original decision of the Commissioner of the General Land Office were correct, and declined to confirm the last-mentioned survey. It is contended by the claimants that the first decision of the Secretary of the Interior, refusing to approve the first survey under the decree, and sending the matter back for a re-survey in conformity with this opinion, is con-

clusive, and establishes the right of the claimants to the whole amount of land within the aforesaid external limits; but the committee are of opinion that such is not the law, and that if the matter be one properly the subject of congressional cognizance, the first report of the Surveyor General of California was correct. They therefore recommend that the bill be indefinitely postponed.

This report was made on January 19th, 1881, and on the 25th of the same month, Montgomery Blair, attorney for the confirmees, filed an application requesting a patent issue to the heirs for the Matthewson survey, no doubt basing his application upon the report of the Senate committee.

On March 7, 1881, Secretary Schurz declined to hear this application, for the reason that he would retire from office in a few days and did not have time to consider it.

This carried this application before Secretary Kirkwood, who declined to accede to the request of the confirmees, as represented by Mr. Blair, not being satisfied that all the interests of the grantees were represented by the offer. It was shown by Mr. Blair that he did represent all the heirs. There was no real objection from any party except from the "*speculator*" Valentine.

This party claimed that the decisions of Secretary Schurz were without jurisdiction, and that the decision of 1872 was final by survey executed in accordance with its directions, and upon these questions Secretary Kirkwood, on April 14, 1882, ordered a hearing on all points.

The case then came before you, and your decision of July 23, 1882, is the result, in which you hold that the decision of Secretary Delano was final, set aside and annul the decisions of Secretary Schurz, and then proceed to construe the meaning and intent of the decision of Secretary Delano in regard to the lines of the new survey.

You held that the objection raised against the manner of the execution of the plat was not sufficient to impair the validity of such plat as a sufficient survey of the grant in conformity

to the decision of 1872. We have endeavored to show you that no survey has been made at all; that said plat was merely compiled from unofficial papers and State surveys, not recognized as of any validity in your Department. But if you adopt the lines surveyed by the State, you must adopt them for the purposes for which they were made.

You also extend the northern lines of the survey over lands not claimed to be within the grant when the case was acted on by Secretary Delano, but which were shown to him at the time as being outside of the lines claimed by the confirmees and Bolton, and Valentine, as Bolton's assignee.

Your petitioners call your attention to the decree of confirmation in regard to the northern line, with reference to the act of juridical possession, and the points shown on the plats along that line.

By examining the Tracy plats then before Secretary Delano you will see that the Arroyo *Holon* terminates at the edge of the marsh lands, near Bickerstaff's house, in a slough called Branch slough, which last disappears in the larger one, called the "Corte Madera slough," five or six miles from the open waters of the bay. But by making the corner at the edge of the marsh and then following the bay along the inside line of the marshes, the description would be correctly located with the State marsh-land survey. If the line terminates with the mouth of the Arroyo Holon, no boundary is given from that point across the marsh to the open waters of the bay, which are several miles distant.

By reference to the report of the Mexican officials who made the juridical measurement, it is stated that these officials rode on horseback when making said measurement. From this it is clear they did not include the marsh lands, because they were impassable for man or beast.

The Mexican law never granted marsh lands, and in grants where no mention was made of them, such lands were excluded by operation of law.

The treaty of Guadalope-Hidalgo guaranteed what the Mexican laws had granted and no more.

At the time this grant was made the civil law prevailed in Mexico, and the water lines of all grants were limited to those known as high-water mark under the Roman or civil law, which prevailed at the time of the date of the grant. This line under the Roman law was the point as far as the greatest wave extended in winter. The Civil Code of Louisiana gives the same description. Article 442 of the code declares that the "sea-shore is that space of land over which waters of the sea are spread in the highest water during the winter season."

In city of Mobile *vs.* Eslava, 16 Peters, 234, this rule of the law is clearly laid down as applying to all overflowed lands acquired from Spain, where the civil law prevailed. It was there held that the title to lands flowed by tides belonged to the king prior to the cession. That the United States acquired the title to such lands by the treaty with Spain, and that upon the adoption of the constitution of Alabama, in 1819, and the admission of that State into the Union, all lands flowed by the tides passed to the State as a part of her sovereign rights. The rule is that in all districts where the civil law prevailed prior to their acquisition by the United States, the civil law continued to prevail so far as related to the tide lands.

California was ceded to the United States in 1848, and when she was admitted into the Union, September 9, 1850, the title to the overflowed tide lands passed to the State as part of her sovereign rights.

In addition to this, on September 28, 1850, (9 Stat. 519,) Congress passed an act granting to all the States the overflowed lands within their respective limits.

Thus the title to all the tide lands had by operation of law passed to the State prior to the passage of the act of March 3, 1851, creating the Board of Land Commissioners, and such board had no power or authority to declare any lands

thus belonging to the State to be covered by any grants adjudicated before them.

Should there be any possible doubt in your mind as regards the proper location of the north line, so as to exclude the marsh and tide lands, we call your special attention to the desiño or map of the grant. You will there see that the north end of the west line unites with the north line at or near the source of the Arroyo Holon, and the north line from this point passes east leaving the Arroyo Holon, the Corte de Madera del San Pablo, (place of cutting red-wood timber,) and all the marsh and tide lands to the north of and outside of the lines of the grant, clearly delineating thereon the exclusion of the marsh and title lands. This piece of red-wood timber was not considered grazing or pasture lands, and was not asked for in the petition, much less granted. This timber land is represented as lying between the grant and the marsh lands as plainly marked on the diseño, and as referred to in the juridical measurement and possession, not only by a line drawn on the diseño, but also by the writing underneath that line.

If the decision of Secretary Delano was final, but you find an ambiguity in it, or in the final decree of the district court, or of the board of land commissioners, then the proper construction should be one which would give full force and effect to the actions of the Mexican authorities. This question was settled by the decission of Secretary Delano, as well as the well settled principles of law.

Your petitioners further state that if you hold that the decision of Secretary Delano was a finality, that the order of instructions from Commissioner Drummond of February 5th, 1872, directing where the lines of the new survey should be established, was also a finality, because no appeal was taken from said order, and this fact they think must have been inadvertently overlooked in your examination of the case.

They further present the fact to your consideration that

if the department insists that all parties shall be excluded as contestants except those who filed objection to the Matthewson survey within 90 days after publication, then no objections of the confirmees or Valentine filed after the expiration of said 90 days should be admitted or considered in the subsequent proceedings; nor should a claim be admitted for any lands which were not shown on the Matthewson and Tracy plats and the original objection filed by the confirmees against the Matthewson survey, because these were the only lands in contest pending before and considered by Secretary Delano, and his decision was confined to them alone. This would exclude all the marsh and tide lands, and permit the confirmees to locate the one league claimed by them within the boundaries shown on the Tracy plat as prayed for by them, but not outside of said lines.

Some of your petitioners were admitted and heard as parties contestants at the hearing before Secretary Delano, and if his decision was final then these parties so heard before him were, by his decision, also left by him as parties to the contest, with rights to show, if they could, that the new plat, when made, was not in conformity with said decision or the juridical possession, and to object to it if it embraced any lands which were not in contest, as shown by the plats, before Secretay Delano, at the hearing.

In Alviso *vs.* The United States (8 Wall., 337), the Supreme Court held that where parties were allowed to intervene by the lower court, it was a decision that such parties possessed an interest entitling them to an appearance; and that such interest cannot be questioned for the first time in the appellate court. "As contestant, the intervener could, of course, show his own occupation of the land in dispute to meet and overthow the pretensions of the claimant founded upon his asserted possession of the premises."

This ruling would give all parties who appeared before

Secretary Delano, and were recognized by him, the right to a continued appearance up to the issuance of the patent.

In the case of the ranch Los Trigos, the Secretary of the Interior decided, Dec. 5, 1874, that the Commissioner of the General Land Office has no power to issue a patent upon a plat materially differing from the field-notes of survey, and he cannot change the sworn returns of a deputy surveyor to make them conform to the plat. (Copp's Public Land Laws, 611.)

The plat returned by Deputy Surveyors Ransom and Alladt, and approved by Surveyor-General Stratton was the only one *returned* by these officers as of an official character, and that, with the field notes accompanying it, was the sole matter for consideration before the Department. If the Department was satisfied that it did not correspond with the lines fixed by Commissioner Drummond in his order and instructions to the surveyor-general of February 5th, 1872, then the Department should have ordered that plat to be amended, so that it did comply with the Commissioner's decision contained in said order of instructions.

Your petitioners also call your attention to an important error in your decision, wherein you say that some of the grantees have, for more than a generation, "had their homes upon the land excluded by the late ruling, and whose all is concentrated upon the spot. During all these years no question of its being within the grant had intruded itself upon the attention of this Department up to the time of the final decision of 1872. It was included in the Matthewson survey of 1858, had been partitioned among the heirs, and was recognized by all the authorities as a part of the grant. The only controversy was whether or not more land should also be included."

The facts are that several parties had settled on the lands around Point Tiburon, claiming it to be public lands outside of the grant, and were living there when Matthewson made the survey. The location of their residences are

marked on the Matthewson plat, and also on the Tracy plat. One of them, named *Lent*, filed objections to this survey within the ninety days prescribed by law. These facts show that the confirmees were not in the unquestioned and undisputed possession of all the lands embraced in the Matthewson survey whenit was made, as you supposed.

It will thus be seen that the facts warrant the following conclusions:

1st. Surveyor-General Mandeville was of the opinion that the grant and decree was for one square league of land, to be located within the out boundaries of a larger tract.

2d. Commissioner Drummond approved of the conclusions of Mandeville, and approved the Matthewson survey and plat made in pursuance of said construction.

3d. Secretary Delano was of the opinion that the grant was for the lands described in the juridical measurement made by the Mexican authorities, and ordered a new survey be made upon the juridical measurement lines.

4th. Commissioner Drummond, in pursuance of said decision of Secretary Delano, and in compliance with the requirements of section one of the act of July 1, 1864, directed the Surveyor-General to make a new survey and plat in the manner and upon the lines directed in his order of February 5, 1872, and as no appeal was taken from this order, it became a final settlement of the lines, and no other question should now be considered except the bare fact of compelling a survey and plat to be made in accordance with his "directions," contained in said order of February 5, 1872.

5th. The plat returned by Deputy Surveyors Ransom and Allardt was not made from actual surveys in the field by United States officers, but merely compiled from other un-

official surveys and State surveys, and does not follow the lines fixed in the directions of Commissioner Drummond.

6th. The action of Commissioner Williamson in holding that the plat returned was valid, and that he had authority to extend the lines over other lands than those within the lines fixed by Commissioner Drummond, and also include lands belonging to the State of California, and lands sold by her under virtue of her State sovereignty and the act of Congress of September 28, 1850, were without warrant of law or authority in the premises.

7th. Attorney General Devans was of the opinion that the grant was for one square league as described in the act of juridical posession; and that it should be located upon the lines described in the juridical measurement, substantially as directed by Commissioner Drummond.

8th. Secretary Schurz was of the opinion that the grant was for one square league only, and not by boundaries, but he held that the decision of Secretary Delano was final, and all he had to do was to compel a compliance therewith in making the new survey and plat. But he inadvertently prescribed the northern line to be fixed so as to erroneously include the marsh and tide lands. This was evidently caused by the supposition that they were within the lines of the plats before Secretary Delano.

9th. The Committee on Private Land Claims in the U. S. Senate were of the opinion that the grant and the decree of confirmation were for one league only, and that it was correctly located by the Matthewson survey.

10th. Secretary Kirkwood overruled the application of Mr. Blair for a patent on the Matthewson survey, and afterwards fixed a time for hearing arguments on the merits and jurisdiction, but he did not decide these matters during his term of office.

11th. You are of the opinion that Secretary Delano's decision was final, and should be executed as a finality. But you have inadvertently overlooked the fact that no appeal was taken from the order and directions of Commissioner Drummond of Feb'y 5, 1872, which also became final in prescribing where the lines of the new survey should be made, and which thereby became the final and settled construction of Secretary Delano's decision; also that you overlooked the fact that the State of California was, by virtue of her State sovereignty and the act of September 28, 1850, the owner of all the marsh and tide lands prior to any decree of confirmation, and that no question affecting the said lands were before Secretary Delano, but that all plats, surveys, and claims of the confirmees and all claiming under them when before him excluded these lands.

We respectfully call your attention to the case of the marsh lands of Israel Kershaw, which is somewhat different from that of some of the other owners of the marsh lands. His deeds on file among the papers in your department show that his lands lie between Peninsula Island and the main land. He was heard before Secretary Schurz. All his lands were excluded by the Matthewson and Ransom-Allardt official plats, by the Tracy plat, and by the decision of Secretary Schurz; so that his rights were not affected by any of these proceedings. He was not notified of any proceedings before you, but your recent decision has included part of his land in the grant, and the application of Mr. Brooks, on behalf of Valentine, to reopen the case, is to include all the rest of his land, adjacent to Peninsula Island, within the grant.

It will be seen from the foregoing that several grave and important errors seriously affecting the interest of other parties have inadvertantly crept into this case greatly to the injury of innocent parties, who have by recent rulings not been allowed an opportunity to appear in the case, and show their rights, and among other errors are the following:

1st. There has never been a publication, such as the law directs and contemplates of any survey which included the lands of your petitioners.

2d. There has never been any survey made as directed by the order of Commissioner Drummond, of February 5, 1872.

3d. That in holding Secretary Delano's decision as final, you erred in not also holding Commissioner Drummond's decision as final for the lines of the new survey to be made.

4th. That you erred in not compelling the new survey to be made upon the lines fixed by Commissioner Drummond. in his order of February 5, 1872, "*in conformity with his directions*," as presented by the first section of the act of July 1, 1864. As no objections were made at the proper time to the order directing the survey, no objections to the survey in the nature of objections to the order or decision can now be entertained.

5th. That you erred in considering any plat where the lines were not run in the field, or any plat not official, or where the field-notes did not correspond with the plat.

6th. When the lines of a plat were extended so as to include parties not before included in the published survey, it was error to exclude them from the rights of contestants.

7th. That it was error to exclude any party as a contestant who was admitted and heard as such before Secretary Delano. If not objected to then it was too late after judgment was rendered.

8th. That when the grant was measured by the Mexican authorities, it segregated the land from the public domain, and it was error to admit or consider any claim for lands not within the lines of the juridical measurement.

9th. That in making the juridical measurement the parties who made it rode over the land on horseback, and it was error in supposing these horses swam through the marshes and sloughs, while the Mexican officers were thus engaged.

10th. That the Mexican Government never granted marsh lands, and in all grants where no mention is specially made of such lands, they were excluded by operation of law.

11th. That all swamp and overflowed lands, including all marsh and tide lands, within the limits of the State of California, belonged to the State by virtue of her state sovereignty and the act of Sept. 28, 1850, and it was error to include them in any Mexican grant confirmed after that date, and which had been segregated from the public domain by juridical measurement.

12th. That it was error to consider any question or collateral issue except the bare fact of compelling a survey to be made, in the field, and duly platted with the field-notes attached, in exact compliance with and "in conformity with" the "directions" of Commissioner Drummond dated February 5, 1872, which excluded all the marsh and tide lands.

13th. It was error to construe the decision of Secretary Delano as requiring more than one league of land to be included within the boundaries of the new survey, for the reason that he held that the juridical measurement and possession by the Mexican authorities established the boundaries, and these boundaries included just one league and no more.

And your petitioners respectfully ask you to re-open your decision of July 23, 1882, and set aside all proceedings in this case inconsistent with the orders of Commissioner Drummond, and to order a new survey of the grant so as to conform to the acts of the Mexican Government authorities,

and in accordance with the decision of Secretary Delano, as explained and described in the order of Commissioner Drummond dated February 5th, 1872.

All of which is respectfully submitted.

December 21*st*, 1882. PETER GARDNER.

To the Hon. H. M. TELLER,
Secretary of the Interior, Washington, D. C.

J. W. DENVER,
A. ST. C. DENVER,
Attorneys for Petitioners.

Williamson, James A.

DECISION

OF THE

COMMISSIONER

OF THE

GENERAL LAND OFFICE,

IN THE MATTER OF

THE SURVEY OF THE RANCHO EL SOBRANTE,

JUAN JOSÉ AND VICTOR CASTRO, CONFIRMEES,

SITUATED IN THE COUNTIES OF CONTRA COSTA AND ALAMEDA, IN CALIFORNIA.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1881.

DECISION

OF THE

COMMISSIONER

OF THE

GENERAL LAND OFFICE,

IN THE MATTER OF

THE SURVEY OF THE RANCHO EL SOBRANTE,

JUAN JOSÉ AND VICTOR CASTRO, CONFIRMEES,

SITUATED IN THE COUNTIES OF CONTRA COSTA AND ALAMEDA, IN CALIFORNIA.

Williamson, James H.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1881.

DECISION

OF

THE COMMISSIONER OF THE GENERAL LAND OFFICE,

IN THE MATTER OF

THE SURVEY OF THE RANCHO EL SOBRANTE—JUAN JOSÉ AND VICTOR CASTRO, CONFIRMEES—SITUATED IN THE COUNTIES OF CONTRA COSTA AND ALAMEDA, IN CALIFORNIA.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 26, 1881.

SIR: I have examined your report of August 21, 1879, and the papers, testimony, and arguments of counsel accompanying the same, in the matter of the survey of the rancho El Sobrante, Juan José Castro and Victor Castro, confirmees, claimed as the Sobrante (surplus) of the ranchos San Antonio, San Pablo El Pinole, Valencia (Acalanes) and Moraga (Laguna de los Palos Colorados).

The history of the case, and matters connected therewith necessary to be considered, as shown by the records of this office are as follows:

The tract of country to which this examination relates is situated across the bay east from the city of San Francisco, and bounded on the southwest by the Bay of San Francisco, on the northwest by the Bay of San Pablo; on the north by the straits of Carquines, connecting San Pablo and Suisun Bays; on the east, commencing at the southwest corner of the rancho San Ramon of Amador, thence following the western boundary of said last-named rancho to the northwest boundary thereof, thence along the ridge called the Cuchilla de las Trampas, following the same to its northern termination; thence to the headwaters of the Arroyo del Hambre, and down said Arroyo northerly to its mouth in the straits of Carquines; and on the south, commencing at the southwest on the Bay of San Francisco at the mouth of the San Leandro Creek, thence up said creek easterly, and by a line from the same connecting with the Cuchilla de las Trampas the eastern boundary. Its extent is approximately north and south twenty-two miles, with a breadth east and west varying from ten to fifteen miles.

The southwest and western portion of this tract is occupied by the rancho San Antonio; in the northwest part is situated the rancho of

H.A. 43F7

San Pablo; in the northeast is the rancho El Pinole; on the east side is the rancho of Valencia; and in the southeast quarter is that of Moraga. These are the five ranchos referred to in the grant of El Sobrante, and mentioned in the decree of confirmation.

The San Antonio rancho was granted by the Spanish Government originally, before the colonization laws, to certain boundaries, to wit, between the Bay of San Francisco and the San Leandro Creek and the Cerrito Creek, which formed a parallelogram and a fair natural boundary; and though juridical possession was given thereof under the Spanish regime, yet it was not confirmed and patented to the extent of the boundaries mentioned in the grant or juridical possession; but a strip of land lying between the summit of the Sierra and the San Leandro Creek was not included in the final survey and patent. The others were grants for quantity within specified exterior boundaries, which, however, were never definitely located by juridical possession. These grants have been confirmed by the United States for the quantity mentioned in each, and severally located by survey, and patented within the boundaries designated, an excess of quantity in each case being excluded.

Besides the five grants above mentioned, three others of later date than that of El Sobrante (or claimed to be so), the rancho Cañada del Hambre, the part thereof in question in this case being situated in the north part and within the exterior boundaries of El Pinole; the Boca de la Cañada del Pinole, situated between El Pinole and the Valencia, within portions of the exterior limits of each; and the San Lorenzo, lying south of the Moraga, necessarily came under consideration in this inquiry. These were grants for quantity, and have been confirmed and patented by the United States.

For a full understanding of the location of the several ranchos referred to, their specific exterior boundaries, and finally determined limits, reference is made to the Boardman map annexed to the objections of Edson Adams in the case. Though inaccurate in some particulars, it will serve to conveniently illustrate the position of the several tracts which come under consideration in this examination.

The following are the proceedings in the matter of the Sobrante grant under the former and present governments.

On the 22d of April, 1841, Juan José Castro and Victor Castro presented their petition to Governor Alvarado, representing that they were desirous of being finally settled upon land of their own, for the purpose of devoting themselves to the labors of agriculture and the raising of cattle, and therefore preferred the following request:

We beseech your excellency that you will deign to grant unto us a piece of vacant land (un terreno baldio, in the original) which is situated on the immediate limits of (en las inmediaciones de) San Antonio, San Pablo, Pinole, the farm (rancho) of Valencia and the farm of Moraga, which land is the overplus (la sobrante) of the ranchos aforesaid.

On the day following, April 23, 1841, Governor Alvarado made the following provisional grant in favor of the petitioners:

As the parties petition for in this representation, so the land of which they make mention is granted unto them, they remaining under obligation to present themselves anew accompanied by a map of the land, so soon as the boundaries of the neighboring land-owners shall be regulated.

No further proceedings in reference to said grant were had under the Mexican government. On the 26th of May, 1852, the brothers Castro, above named, presented their petition to the board of land commissioners for California, asking confirmation of their claim to the land aforesaid, in which they set forth, that on the 22d of April, 1841, they presented their petition to Governor Alvarado "for a grant of all the vacant (sobrante) land lying between the ranches San Antonio, San Pablo, Pinole, Valencia, and Moraga, being the surplus or overplus left between the said ranches after the boundaries to the ranches shall be ascertained and settled;" and that on the 23d of April, 1841, the governor "granted the land as prayed for," &c. They also allege settlement, occupation, and cultivation upon the land granted; that Victor Castro had built a house and resided thereon, and for the last fourteen years had and held * * * exclusive and continued possession thereof.

On the 3d of July, 1855, the board rendered its decision, holding the claim valid and describing the land confirmed, as follows:

The land of which confirmation is hereby made is situated in the counties of Contra Costa and Alameda, and is the surplus (sobrante) which, on the 23d day of April, A. D. 1841, the date of the decree of concession to the present claimant, existed, lying between the tracts known as the ranches of San Antonio, San Pablo, Pinole, Moraga, and Valencia, reference being had to the original *expediente* and grant on file in this case.

By an order of the United States district court, appeal from the decree of the board of land commissioners was duly dismissed, and the decree became final on the 6th day of April, 1857.

On the 27th of March, 1863, upon stipulation to that effect between W. H. Sharp, "United States attorney," and H. W. Carpenter, "attorney for claimant," an order was made by the United States district court to amend the decree of the board of land commissioners, by inserting therein, after the word "between," the words "or within the exterior boundaries of," so as to make the description read, "the land of which confirmation is hereby made * * * is the surplus (sobrante) which, on the 23d of April, A. D. 1841, * * * existed, lying between or within the exterior boundaries of the tracts known," &c.

By the further order of said district court, made on the 26th of July, 1866, on motion of the United States district attorney, the claimants appearing by their attorney, the aforesaid order of March 27, 1863, was vacated and set aside, and the stipulation upon which the same was founded stricken from the files, "the court being satisfied" (as stated in said order) that it had no power or jurisdiction to enter said order of

March 27, 1863, and that the same was improvidently entered; the court reserving any opinion as to the construction of the decree.

The survey of El Sobrante, under consideration, was made by United States Deputy Surveyor William Minto, in August, 1878, and published under the act of July 1, 1864, the first publication in San Francisco having been September 6, 1878. It includes a large part of the rancho Boca Pinole as patented, a parcel from the northwest corner of the patented Moraga; is bounded east by the remainder of Boca Pinole and the Valencia; on the south by Valencia and Moraga; on the north by El Pinole; on the northwest by the exterior boundary of San Pablo; and on the southwest by the boundary of San Antonio.

Numerous objections to the survey, protests against the claims of the owners of El Sobrante, and interventions in the case, were filed within the time prescribed by the act, and others after its expiration, and a large amount of testimony was taken on the hearing.

On the 29th of November, 1878, the claimants of El Sobrante filed in your office a report and petition, ostensibly in compliance with the condition contained in the grant of Governor Alvarado, which required the grantees to present themselves anew, so soon as the boundaries of the neighboring land owners should be regulated. This document bears the signature of Victor Castro, one of the original grantees, and of H. W. Carpenter, as attorney for claimants. It sets forth the claim of the owners of El Sobrante to all the land contained within the limits of the large tract before described, not included in the five ranchos named in the grant as finally located, and is accompanied by the Boardman map before referred to, as showing the final location of those ranchos and the lands left out from the same, and asks that a final survey of the land granted and confirmed to the claimants be made, and a patent issued therefor.

It was objected to the Minto survey of El Sobrante before you by the claimants under the grant, or some of them, that it was improvidently and illegally made before the boundaries of the Moraga rancho had been finally determined; that the claimants made no application for the survey, and that it was made without their knowledge and without notice to them. It is also objected before this office on the part of the owners of the rancho Boca Pinole that said survey was not made in conformity with the statute governing surveys of private land claims in California, the claimants having made no application or request therefor.

It does not appear that the Minto survey was made before the boundaries of the Moraga were settled. On the contrary, the record shows that the survey of that rancho, which was finally carried into patent, was made in 1875; was approved in your office December 20, 1877; by the decision of this office April 13, 1878, and by the honorable Secretary of the Interior affirming that of this office August 9, 1878, and that the survey of El Sobrante was reported to your office August 26, 1878.

This objection, therefore, even if it would have been entitled to consideration under the state of facts alleged, is without force.

There is no legal requirement upon the surveyor-general to give notice of his purpose to survey a private land claim. After the survey he is required to publish notice when all parties interested have opportunity to be heard.

I have already communicated to you, under date of February 25 last, my opinion that in accordance with the decision of the department of August 28, 1879, in the case of the survey of the rancho Entre Napa, the survey in the present case was made under the act of 1864 under which it was published, and subject to its provisions, and must be regarded as the official survey in this case. An examination of the record confirms the view then taken that in all the material circumstances relating to the surveys the two cases are identical. The survey under consideration is therefore held to be legally valid.

It is unnecessary to state in detail the numerous objections, protests, &c., which have relation to the survey as to its correctness. They all fall, in substance and effect, within one or the other of the three theories following:

1st. That the land applied for by Juan José and Victor Castro and provisionally granted by Governor Alvarado, and finally confirmed to them by the board of land commissioners, was a piece of vacant land contiguous to the five ranchos named in their petition outside of and lying between their exterior boundaries.

2d. That the five ranchos named were, as to their exterior boundaries, coterminous, and the land granted and confirmed to the Castros was that parcel which should be found to lie contiguous to and between them when the quantity granted to each should be finally located and its boundaries determined, being so much of the sobrante or surplus of said ranchos as should be excluded on their final location, lying contiguous to and between them.

3d. That the ranchos named were coterminous, and the land granted and confirmed as El Sobrante was all the sobrante or surplus which should result from them respectively on the final location and determination of their boundaries, whether lying between them, or some of them, or entirely outside of their respective finally ascertained limits, and within the exterior boundaries.

Some additional and collateral questions are presented, relating to the cases of the ranchos Cañada del Hambre, Boca de la Cañada del Pinole, and San Lorenzo, to several small tracts mentioned as tide marsh lands, and other parcels claimed to belong to the grant, which will be considered in their order.

Upon the main question as to what land was asked for by Juan José and Victor Castro, and granted and confirmed to them, as upon most of the minor points, the testimony produced is conflicting; consisting

largely of opinion, inference, and argument, hence affording but limited aid in the solution of the matters in controversy.

What did the Castros claim?

Was there vacant land?

Juan B. Alvarado, who, as governor, made the grant, testified in substance that upon the application of the Castros to him, he proceeded to procure from them the necessary information in reference to the sobrante asked for—what it was, and where it was; that Victor Castro said that there were some lomitas, several little hills, rocky, situated about six miles east of the houses of San Pablo; that Juan José Castro said to him that the land petitioned for contained about a league and a half, situated about six miles east of the settlement of the San Pablo, where there was a place called la Jolla; that he (the witness) knew these adjoining ranchos had natural boundaries, and that some time or other their boundaries would be established in case of juridical possession provided for in the grants; that they (the Castros) made their petition under the belief that there must be a sobrante or surplus in that locality—that was the supposition (Testimony, vol. 2, pp. 346, 348, 349, 350); that he (the witness) gave them a provisional decree in order to protect a petition that they had made for a certain portion of land that was considered vacant and unoccupied between those ranchos; that Juan José Castro said the land they asked for would have to be, according to his way of understanding, a sobrante of the boundaries of the ranchos that came to center there in that place. (*Ib.*, pp. 378–381.)

Question. Suppose that after having made this concession it had been ascertained that there was no vacant land between these ranchos, would the concession have amounted to anything?

Answer. Nothing that would not be in that place or locality.

Question. Suppose that there existed in 1841 a league and a half between those ranchos and that afterwards these ranchos were surveyed and cut down to less than their boundaries at that time, would that grant to the Castros convey anything more than the league and a half?

Answer. Nothing that would not be in the same locality. Where there could be more or less land. A little more, not much. (*Ib.*, pp. 381, 382.)

This testimony was objected to by the claimants, who introduced on their part a deposition of Governor Alvarado, taken before the land commission in the El Sobrante case, in which he deposed, in substance, that the land granted by him to Juan José and Victor Castro, in 1841, was the sobrante of the ranchos San Pablo, San Antonio, Pinole, Valencia, and Moraga. That the Castros applied to the government in the usual manner for a grant of land called El Sobrante, or the overplus of the adjoining ranchos named, which overplus was supposed would result over and above the lands granted to the individual grantees of said ranchos. That the grant was made in consideration of important military services rendered by Victor Castro, &c. That it was expected that the Government of Mexico would, in course of time, send commissioners and surveyors to separate and measure the lands granted to individuals,

and would mark and establish boundaries of each grant, in accordance with those title papers; and that after the establishment of the boundaries of the above-mentioned ranchos, there would result an overplus in the ranchos, which several portions so remaining as overplus would constitute the tract of land which was granted to the petitioners Castro by his decree. (Exhibit 95, Adams.)

The testimony of Alvarado could not vary the just legal construction of the grant made by him in 1841, and the testimony given by him before the land commission was entirely at variance from that given by him before you, as will be seen by the quotations which I have made.

So the testimony of other witnesses before you, tending to contradict the grant, was immaterial and ought not to have been received, and cannot be considered by me in arriving at the true construction of the grant itself and of the decree of confirmation. As to whether there was vacant land lying between the original boundaries of the five main ranchos, the testimony is conflicting, but to my mind the weight of evidence establishes the fact that the main ranchos were coterminous, and that the whole territory herein first described was covered by the outboundaries of said five ranchos, and that there was no vacant land lying between them. As to the meaning and application of the original terms employed to characterize the land, the testimony of witnesses examined in reference thereto shows that "un terreno baldio" means vacant land; strictly, in the general understanding of it, government or public land; land that has not been granted, not necessarily unoccupied, but land that it is within the power of the government to grant—vacant in that sense. That the word sobrante means surplus, remainder, that which is left over, and, when taken in connection with the land granted, it means the excess or remainder, inside of the exterior boundaries of the grant referred to, over and above the specified quantity granted.

As has been already stated, the ranchos San Pablo, Pinole, Valencia, and Moraga were severally grants for a specific quantity within designated boundaries.

The grant in each case required land to be measured according to law, or according to ordinance, and reserved the surplus to the nation. The measurement required was the usual juridical proceeding by which, in grants of that character, the boundaries named in the instrument were designated upon the ground and the location determined.

This proceding, however, never took place in respect to either of the four ranchos above named. They were only defined as to their limits by the exterior boundaries.

It is clear from an examination of the petition of the Castros and the grant, in which the land was described as follows: "which land is the overplus (sobrante) of the ranchos aforesaid," that they applied for and were granted, the sobrante or overplus of the five ranchos named.

That the word "sobrante" in its relation and application to land grants has, by both law and custom, a definite and technical meaning—

that it was so understood by the granting authority, and the grant made in accordance with that understanding, is manifest from the requirement in the grant that the grantees should remain under obligation to present themselves anew for the completion of the proceedings in their favor, so soon as the boundaries of the neighboring land owners should be regulated.

This effectually fixes the character of the concession as a sobrante grant. The land was granted provisionally. Its extent and limits to be determined when the boundaries of the ranchos named should be established, and it legally follows that the establishment of the boundaries of the five ranchos also established the boundaries of their sobrante.

The decree of confirmation recognizes the grant as a sobrante grant. The commissioners, in their opinion accompanying the decree, say the evidence in this case establishes the following facts: That the petitioners presented their expediente for a sobrante of land lying between ranchos named in said expediente. Juan B. Alvarado, governor of California, on the 23d of April, 1841, issued a grant to the petitioners and required them to report a plat of the same as soon as the adjoining ranchos could be surveyed and the extent of the sobrante ascertained, which survey has not been had of said ranchos, so as to enable the petitioners herein to define with certainty the boundaries of their said "sobrante." The decree consequently makes no allusion to "un terreno baldio" but confirms the grant describing the land as the overplus, sobrante, &c.

It is therefore evident that the board considered the vacant land asked for and granted, not as vacant independently of the ranchos mentioned, but as vacant by reason of being sobrante of said ranchos, and confirmed it as such sobrante.

Attention is called by some of the contestants of the claim of the owners of El Sobrante to the amendment of the decree of confirmation procured by the latter in the United States district court, which the court afterwards set aside as improperly made. Said amendment, after the words "lying between" adding "or within the exterior boundaries of," which, it is insisted, indicated that in the knowledge and belief of those who procured said amendment, the confirmation did not extend to land within the exterior boundaries of the ranchos as named, and only included vacant land lying outside of and between them. Procuring the amendment alluded to, indicated doubts on the part of its movers, as to the scope of the confirmation, and a wish to make it more certain, and, possibly, more comprehensive. But in my view, the amendment, if retained, would not change the meaning, and cannot affect the construction which should be given to the decree.

The Castros petitioned for land that was the overplus (sobrante) of the ranchos referred to. The grant, by the condition requiring them to come again so soon as the boundaries of the ranchos should be ascertained, to have completed the proceedings in their favor, showed that it was made as a sobrante grant; and the decree of the board by declaring

the claim valid, and in its description of the land confirmed making special reference to the expediente and grant, undoubtedly recognized the claim as including the surplus lands within the exterior limits of the ranchos mentioned.

The grant to the Castros was a grant, *by name*, of the sobrante, pure and simple, of the five ranchos, San Antonio, San Pablo, Pinole, Valencia, and Moraga. As such, it had specified and certain boundaries; for in law, that is certain which can be made certain.

As a grant of the sobrante of certain prior grants of quantity within exterior boundaries, the extent and limit of El Sobrante was as definite and certain as a deed of "black acre" would be, and an attempted, particular, descriptive addition, if erroneous, should be rejected, or if contradictory of the more certain description by name, for the name is more worthy and reliable.

This is based upon the well-approved rule that a false description cannot render uncertain that which is already well and sufficiently described. In the nature of things, and on the face of the record, it was impossible to give a description of the land granted, which would be as reliable and definite as the name "sobrante" conveyed. In the marginal grant or indorsement made by the governor this is admitted; for the grantees were to present themselves anew, accompanied by a map of the land, when the boundaries of the principal ranchos should have been surveyed and regulated. As the grantees of the main ranchos had the first right of selection and location of their respective lands, the impossibility is evident of a correct description of the sobrante in advance, whereas a regulation of their boundaries would operate *ipso facto* as a survey of the El Sobrante.

Concessions of lands in California by the Mexican Government were of three kinds: first, by exact boundaries; second, for quantity within out-boundaries; and third, by name. The first generally conferred a perfect title, though under the statutes of Congress, confirmation, survey, and patent were still necessary.

In the second and third cases, the grantee was vested by the grant of an immediate general interest, which became particular when the survey was made. (United States *vs.* Higueras, 5 Wallace, 834; Hornsby *vs.* United States, 10 Wallace, 232.) In this case the general interest was in the several grantees of the original five ranchos, with a particular interest in the grantees of the sobrante, when the boundaries of the first should be regulated and ascertained. The name sobrante has received a fixed and certain meaning in the uniform decisions of the Supreme Court relating to every grant of a like nature, which has gone before that court.

There are several sobrante grants in evidence in this case, and the briefs filed in behalf of the claimants refer to many decisions recognizing and establishing the uniform meaning of the word.

The representations which it was attempted to show before you that

the Castros had made to Alvarado before receiving the grant, could not be taken under any circumstances to limit its force or its extent. In the case of the United States *vs.* D'Aguirre (1 Wallace, 311), the petition on which a sobrante grant was made stated the amount of the sobrante, remnant, or surplus, to be about five leagues, and yet the court upon a direct issue sustained the grant to eleven leagues (the limit allowed to one grantee by the colonization laws), holding that the description of five leagues was not a limitation but a mistake, and that the grant of the sobrante covered the whole land within the out-boundaries of the diseños of the main tracts which was not covered by the senior grants.

The five main ranchos in the case now before the office were coterminous. This fact, though denied by some of the contestants, is established by the testimony in the record, particularly by that of the surveyor, Boardman, and of Mr. Hopkins, keeper of the Spanish archives; by the amended map annexed to additional objections of the claimant, Edson Adams, and which can all be verified by other records remaining in the General Land Office.

This fact shows that the present attempt to substantially defeat the grant by assuming that it was not of the sobrante or overplus of the main ranchos, but a tract of land lying between them, has no basis of truth. There was no territory between those ranchos. There can be no rational dispute as to the meaning of the grant itself. But it is contended that the decree of confirmation describes different land from that granted.

Let us consider this proposition.

The function of the tribunal established by Congress (the land commission) to examine land claims in the first instance was fixed by the statute, and the extent of its powers has been examined by the Supreme Court. Its duty was to inquire into and determine the validity of grants submitted to it, and not to survey, locate, or segregate lands granted. And in this very case the board say in the opinion: "A large amount of testimony has been taken for the purpose of settling the boundaries, which is rendered inapplicable to the merits of this claim by the decision of the Supreme Court of the United States in the case of Fremont," thus showing that the board did not misconstrue or intend to exceed its authority, but simply to pass upon the integrity of the grant, and leave the location of the land where the statute had lodged that power; that is to say, to the surveyor-general of California, under the supervision of this office.

It is true that the language of the decree of confirmation undertakes to identify the land in a vague way, and that the decree seems to be uncertain and ambiguous in that respect; but a careful examination of the decree, according to principles established for the construction of such documents, will bring harmony out of its apparent inconsistency.

In the first place, the board adjudged that the claim is valid, and that the same be confirmed; that was all that they had the power to do. But

as they had not in the opening described the grant with certainty, they then proceed to do so, and though apparently attempting to describe the land, which they could not do, they describe the grant in inartificial language, which simplicity is, however, cured by the conclusion of the decree, which refers "to the original expediente and grant on file in this case."

Why did the commissioners refer to the original expediente and grant, except for greater certainty? Not to contradict. For it does not contradict what goes before, but because an examination of the grant will explain and reconcile an apparant uncertainty in the immediately preceding context, in which "the surplus (sobrante) is stated as lying between the tracts known as rancho of San Antonio, San Pablo, Pinole, Moraga, and Valencia," which is an apparent contradiction in terms, for, as we have seen, "sobrante" means an overplus of quantity before granted, within out-boundaries, and the tract lying between former grants is not a sobrante at all.

So, to reconcile this seeming uncertainty and apparent contradiction, we must read the decree in the light which the board has thrown upon it.

It is not open to the objections stated by the Supreme Court in the Halleck case, that the grant cannot be referred to to contradict the clear meaning of the language of the decree, for in this case it makes clear what was obscure, and reconciles an apparent contradiction.

A false description of land in a decree, as well as in a grant or conveyance which contradicts that which was already certain and positive, as a *name*, should be rejected, upon familiar principles. It is obvious enough how the board came to use the language they employ. The awkwardness and uncertainty grew out of the mistaken meaning of the phrase employed in the petition for a grant "en las inmediaciones" carelessly taken to be translatable by the word "between" instead of "in the immediate limits of." The board did well to refer for greater certainty to the original grant.

As the main ranchos were coterminous with the prior right of selection in the several grantees, they might have selected their respective pieces in conjunction, each bounding the other, so as to form but one body of land, and so the grantees of the sobrante would be compelled to take their lands entirely on the outer limits. In point of fact, that was done to a considerable extent; and portions of the sobrante, of all the ranchos as patented, are on the outer edge, and not in immediate proximity to any other of the five patented ranchos.

Thus the theory that the sobrante lands must be taken in a common center of the main ranchos might have left no common center to which the grant of sobrante could be attached at all.

It appears that a part of the surveyed and patented rancho of Moraga was included in the Minto survey. This is clearly erroneous. The Moraga was one of the original five ranchos, and its confirmees were of

course entitled to a selection of their quantity within the exterior boundaries.

The decree has also been criticized to the disadvantage of the claimants, because it mentions the land as the sobrante which on the 23d day of April, 1841 (the date of the decree of cession to the present claimants), existed, lying "between," &c., and it is suggested that as the ranchos were coterminous there was not, and could not be, any land to which the grant of the sobrante could attach; but that position is untenable.

Of course it was known to the board of land commissioners from the records before them that grants had been made of territory in the sobrante subsequent to the concession to the Castros of the latter, and the board, to preserve the rights of grantees according to their priorities, named the date at which the sobrante grant took effect, and confirmed to the claimants all the land which at that day was included in the sobrante. That is the fair reading of the decree, according to its true intent.

The entire sobrante of the five principal ranchos having been granted to the Castros by a grant *by name*, that land was no longer subject to grant to others.

If there be a sobrante of the five original ranchos, or of any of them, at the present date, there was, of course, in contemplation of law, and in fact, a sobrante to the same extent existing at the time of the grant in 1841.

But the patentees of land subsequently granted as "Cañada del Hambre" and "Boca de la Cañada del Pinole" and "San Lorenzo" insist that their patents secured to them the titles of the lands claimed by them, respectively, as against the claimants of the sobrante by priority of date of the patents, although the act of Congress of 1851 expressly provides that such patents shall not be conclusive against "third parties," in which attitude stand the sobrante claimants, and the holders of "Cañada del Hambre" and Boca Pinole insisted that the sobrante claimants are estopped by the fact that the latter contested the surveys of the former.

How far estopped? They are only estopped to question the correctness of the surveys, the only question then involved. They are not estopped to question the title arising from priority of grant, for a question of title can only be settled "by the judiciary," says the Supreme Court, and in order to meet them on equal terms in court the claimants of the sobrante are entitled to a survey and patent. They have a decree of confirmation, and the statute gives them an unqualified right to a patent which will give them a standing in court to contest and determine judicially the priority of rights.

In order to base their claim of priority of right by reason of prior surveys and patents, the holders of the patents for lands within, and encroaching upon, the sobrante territory are forced to insist that the

grant of the sobrante was a "floating grant," and, therefore, that their own grants first patented take so much of the float. In this they are manifestly in error. A floating grant is one for a specified quantity of land to be selected by the grantee within exterior boundaries, comprising a larger area, the overplus being reserved to the nation. In such a case the nation reserved the right to dispose of other limited quantities within such exterior boundaries, and it is held that the most expeditious of such grantees will acquire the better right (perhaps as a reward for activity).

But in the present case the entire sobrante of five ranchos was granted by name to the Castros, and they took the whole. No prosecution of their claim would have enabled them to describe, regulate, survey, segregate, or obtain a patent for the land granted to them until the main five ranchos were regulated as to boundaries, and the survey of the main ranchos was a survey of the sobrante. The grant of the sobrante was absolute, and without limit or restriction. It was not in any sense a floating grant, but a fixed and certain one by name, and the limits of which were ascertainable in the mode pointed out in the grant itself.

While these views apply forcibly to the portion of the "Cañada del Hambre," which was surveyed within the territory of El Sobrante, I am inclined to the opinion, and must hold that the survey and patent of the "Boca de la Cañada del Pinole" stands upon a different footing. In the latter case, the owners of El Sobrante, after opposing the survey of "La Boca," made and approved November 9, 1860, which was ordered into court under the act of June 14, 1860, seem to have come to an agreement with the owners of "La Boca" as to a final survey which should go to patent, and a decree of the district court made on the 24th December, 1868, "by consent of all the parties," was entered, setting aside the first survey and correcting and modifying the survey as in the decree is particularly specified upon which a patent was accordingly issued. This fact, of a consent arrangement of the boundaries, and the further circumstance that in some of the objections to the Minto survey of El Sobrante it is claimed to be erroneous because it "improperly embraces a large tract of land heretofore included in the final survey of the 'Briones Rancho'" (La Boca), seem to me to estop the claimants of El Sobrante to now say that the consent decree of amendment of the survey of "La Boca" was not a permanent adjustment of boundaries between that rancho and El Sobrante. I must, therefore, consider the boundaries of "La Boca de la Cañada del Pinole" as finally surveyed and patented, as an adjustment made by the express consent of the claimants of El Sobrante, which ought not to be disturbed.

What lands are claimants of the sobrante entitled to have surveyed and patented to them?

This seems to be a question easy to answer as a whole, though troublesome in detail, from the shape of the selections made by the grantees of the main ranchos. As a general proposition, take the exterior bounda-

ries of the five main ranchos as delineated on the Adams maps hereinbefore referred to, and leaving out the five ranchos as finally surveyed and patented (or "regulated," in the language of the original concession), the overplus within its exterior boundaries is the sobrante.

The patented Boca del Pinole should also be excluded, and the line in the south adjusted as hereinafter indicated. In detail, a survey thus made would include several pieces of land, some lying in the center and several on the exterior or outer edges of the original out-boundaries. But a survey in several parts is not objectionable when the circumstances render it necessary. The del Hambre, a sobrante grant, was surveyed and patented in two separate and distinct parts, and if equal reasons applied it might as well have been surveyed in twenty parts. The Moraga rancho also, under the instructions of the United States district and circuit courts, was surveyed and patented in two separate parcels. But an untenable objection is made to the inclusion in the survey of El Sobrante of those tracts on the outer edges not surveyed and patented to any other grantee, on the ground that those pieces belonged to the United States Government as public lands, and to pre-emptors. Hitherto there could not properly be any pre-emption of such of the lands as are claimed under Mexican grants, and as pre-emptors in their own names; such of the objectors as occupy that position have no standing before the department nor any right to be heard.

If they claim any inchoate rights under the United States they should appear and present their claims and objections only in the name of the United States. If they claim to have acquired rights under the State of California, which are not perfected, they should appear in the name of the State, and not in their individual names.

To say that no land should be included in the survey of the sobrante but that which is surrounded by and touches all the five main ranchos is to deny the primary description by name, and to hold in the face of presumptions and legal conclusions to the contrary that the grant was not of the *sobrante* at all.

It is urged by some of the objectors that the Mexican Government could not have intended to grant a sobrante of the San Antonio rancho, because they say that the grant of San Antonio was a perfect grant to specific boundaries, and was finally surveyed and patented accordingly, and that, therefore, the San Antonio was only named as a boundary.

If there were no sobrante of the San Antonio the grant to the Castros would only fail in so much as the supposed sobrante of that rancho was concerned. But it is a mistake to say that there is no sobrante of the San Antonio, that it was patented to the original boundaries, or that it was a perfect grant.

The rancho of San Antonio was granted in 1820 to Louis Peralta by the Spanish governor, Sala. It extended along the bay from the deep creek of San Leandro to the Cerrito Creek, and these were its designated boundaries. Presumably, it embraced all the land between said

creeks from their sources to their mouths in the bay. But this was not a perfect grant, nor would the title, when finally issued to Peralta, necessarily cover all the lands embraced within the boundaries.

As has been held by the Supreme Court of the United States in Carpentier *vs.* Montgomery (13 Wallace, 480), it was only an equity subject to the confirmation of the government. By the decree of confirmation it was limited on the east to the crest of the mountain and there resulted exactly what was presupposed by the grant to the Castros of the sobrante of San Antonio, a surplus of all the land lying between the San Leandro Creek and the crest of the mountains, as shown on the diseño in the San Antonio expediente and on the various maps in this case, and this constitutes in part the sobrante of San Antonio, which embraces tract D, colored green, and tract 11, colored red and bordered with yellow, as laid down on the Boardman map.

MORAGA SOBRANTE.

The Moraga rancho was granted in 1835 to Joaquin Moraga and Juan Bernal. In the grant of that date by Governor Castro, and in the resolution of approval thereof by the departmental assembly, it is granted by name as the tract of land known by the name of "Laguna de los Palos Colorados" without further description as reference to any other description.

There was in the expediente a rough map or picture of the country, but with uncertain and ill-defined boundaries, so uncertain that different witnesses gave to the objects and boundaries on the map, widely different locations. But the final and formal grant made by Governor Alvarado in 1841, fixes the boundaries of the place known by the name of Laguna de los Palos Colorados, with certainty and exactness.

On the north by San Pablo Brook, and a straight line to the east, so as to include a certain spring; west by the mountain range (sierra) up to its summit ridge (Hasta la Cumbre), east by the ridge of the Trampas Hills, and south by the establishment of San José. As to the northern and eastern boundaries there is no controversy. On the west, the boundary is the mountain range. Sierra does not mean hills, nor does it mean a mountain, but a mountain range—the saw teeth of the mountain—the highest range. There is but one sierra, one mountain ridge there dividing the Moraga Valley from the Bay Valley (the sierra of the Red Woods) and the line runs along its cumbre, or highest summit.

There is no ambiguity about this, no room for construction or explanation. It includes all the lands lying between the northern and southern boundaries as far west as the summit or highest ridge of the mountains. The southern boundary was the establishment of San José.

Where was the northern line of the establishment of San José?

On the Peralta map, on the south side of the San Leandro Creek, there is written, "Mission of San José."

In the report of the missionaries found in the Mexican archives, the Mission of San José is described as bounded north by the San Leandro Creek. This, then, is boundary, so far as the creek runs in an easterly and westerly direction.

In the expediente of Amador for San Ramon, it appears that the petition of Amador was referred by the governor to the authorities of the Mission of San José, who reported that a part of the land petitioned for belonged to that establishment, and they marked upon the map accompanying the petition of Amador, a line designating such boundary, and wrote upon it apt words, showing the meaning of the line, and the boundary of the mission.

This was accepted by the governor as correct, and the grant to Amador was made accordingly.

It appears from the maps of Bielawski and Boardman, and by the testimony of expert witnesses, that a straight line drawn eastwardly from the great bend of the San Leandro Creek and following the same general direction as that of the creek from its mouth to its great bend would nearly strike the westerly extremity of the northern line of the mission, as shown on the Amador map.

The rancho San Lorenzo, by its terms, is bounded on the north by the Moraga rancho. It would therefore seem that there could be no doubt whatever that the sobrante grant should take all the land lying north of San Lorenzo, as the same has been surveyed and patented.

Again, the diseño of the Moraga shows a heavy range of hills lying on the south or southeast.

There is abundant evidence that a continuous and prominent range of hills extends in one unbroken line from the ridge of Las Trampas, the eastern boundary of Moraga, to the San Leandro Creek, which, upon the Boardman map, would divide the eastern tract No. 11 from tract No. 12.

But it is objected that each of these lines extends far south of the true line, among other reasons, because in the matter of the Moraga survey it was stipulated that the Higley survey represented the out-boundary of the Moraga rancho, and that according to said survey the southern line was north of each and all of these three lines.

The Higley survey embraces much more than the three leagues which were confirmed to Moraga, and the confirmees had the right of selection. If in that proceeding they were willing to limit their right of selection to a smaller area than they were entitled to select from, I see no reason why the confirmees of El Sobrante shall suffer in consequence thereof.

There was nothing in that stipulation binding upon them in that proceeding, or that did or could estop them from demanding their legal rights in this survey, the stipulation having been made in that particular case and for the purpose of that survey only.

Believing that the calls of the grant are controlling, after carefully considering and weighing the testimony, I can come to no other con-

clusion than this, as to the true probable line of the establishment of San José. That its northern boundary was the San Leandro Creek, from its mouth to the great bend thereof, and from thence a direct line to the southwest corner of the rancho of San Ramon of Amador, and that all the lands lying north of said line, and within the fixed northern boundary of said rancho, and lying east of the summit of the sierra or coast range, and west of the patented lines of said San Ramon rancho and the summit of the Las Trampas Hills, not included in the two tracts surveyed and patented to the confirmees of the Moraga, constitute the sobrante or surplus of the rancho of Moraga; that that portion of said surplus lying west of the San Leandro Creek and east of the patented lines of San Antonio was also, as we have seen, a sobrante of the San Antonio as originally granted.

But while the proofs as to the location of the northern line of the establishment of San José, east of the great bend of the San Leandro Creek, all tend towards the result above indicated, they can hardly be considered conclusive of this case. The rude sketch or map in the Moraga expediente, so far as it can be interpreted with the aid of the testimony of witnesses, seems to be terminated on the southerly side by a high ridge of hills running from the highest summit of the Trampas Range in a southwesterly direction, and was where the patented line of the San Lorenzo rancho was finally located. This rancho, by the terms of the grant thereof to Guillermo Castro, was bounded on the north by the Moraga rancho, and the map in the expediente in that case, which was presented to the governor, and upon which in part his action was based, shows the Moraga rancho as bounding it on the north, and it appears from the evidence (see Stratton's evidence) that the San Lorenzo was finally surveyed pretty closely up to the northern limits of the tract shown on the diseño. Undoubtedly, the Mexican Government treated these two as coterminous ranchos.

It does not appear that any objection was ever made by the owners of the Moraga rancho to the grant to Castro or to his occupation up to the line claimed by him, nor to the final survey and patent issued to him. They may, therefore, I think, be fairly considered as acquiescing in the construction particularly put upon their grant by Guillermo Castro and by the government in dealing with him. To this it may be answered that there was within the exterior boundaries of the place Laguna de Los Palos Colorados a much larger area than the three leagues granted to Moraga and Bernal; that they had made a practical selection and location on the extreme northern part of the tract; and that they could not, therefore, have had any legitimate object in protesting against a slight encroachment upon their southern boundary, where they knew that there must result a larger surplus, to which they could not, in any event, maintain any claim of title, and that these considerations should have but slight weight against the owners of the sobrante, whose rights are derived from an entirely different title and who ought not to be

prejudiced by the acts or neglect of others in proceedings to which they were not and, in the nature of the case, could not be parties. However this may be, I am of the opinion that substantial justice will in this way be done to all parties, and I shall hold that the southern line of the Moraga sobrante, east of the San Leandro Creek, must be limited to the northern boundary of the rancho San Lorenzo, as the same has been finally surveyed and patented to the claimant in that case. In these matters of conflicting evidence and uncertain boundaries, it is often difficult and not always possible to do exact and unerring justice, but I am satisfied that the conclusion I have reached is, under all the circumstances, as nearly as practicable, equitable and just.

THE SOBRANTE OF SAN PABLO.

The rancho of San Pablo was finally granted, on the 20th of August, 1835, with the following boundaries:

Bounded by the ranchos of San Antonio and El Pinole and a portion of the Bay of San Francisco, containing four leagues or a little over, which quantity was required to be measured off by the proper officer from the larger tract embraced within the boundaries mentioned in the grant; the surplus (sobrante) that might result, to remain to the nation for its convenient uses. The grantee, Joaquin Castro, then had a right to select the four leagues granted him anywhere within the boundaries called for in the grant and shown in the diseños referred to therein.

Of the boundaries called for in the grant two were certainly fixed, to wit, the Bay of San Francisco and the rancho of San Antonio, as finally located and patented. A sobrante resulted on the north and east, which forms tract No. 8, as described on Boardman's map. Also, tracts 1, 2, 3, and part of 4; which last-named tracts are designated as salt marsh lands.

The testimony in reference to the four last-named tracts, and also in reference to tracts 5 and 6, is conflicting as to the character of the lands therein contained. Some witnesses testify that said tracts are covered by the ordinary tides; others testify that the lands are covered by extreme high tides only; and it appears also from the evidence that the character of these lands has considerably changed by accretion within the last thirty years.

Considering the difficulty of obtaining exact and definite information as to these lands, it is fortunate for all parties concerned that a reliable survey was made under the direction of the United States Government in 1850, and before the changes from mining débris are supposed to have occurred.

It has been repeatedly determined by the Supreme Court of the United States that confirmed Mexican grants, bordering upon tide-water, extend to ordinary high-water mark, and that has been the rule in all cases where ranchos bordered upon the Bay of San Francisco, where the

confirmees selected such lands. (United States *vs.* Pacheco, 2 Wallace, 590.)

The government survey to which I have alluded, to wit, the coast survey, fixes the lines both of ordinary high-water and of ordinary low-water mark.

You are therefore instructed in making the survey hereinafter directed to be guided by said coast survey, and you will embrace therein such portions of said named tracts, to wit, 1, 2, 3, 4, 5, and 6, as were at the date of said coast survey above ordinary high-water mark.

SOBRANTE OF THE RANCHO EL PINOLE.

The rancho El Pinole was granted in 1823 to Ignatio Martinez; but having lost his title-papers, he, in 1842, petitioned for and obtained a second grant, with the following boundaries: From the mouth of the cañada of the same name (Pinole), along the same towards the east as far as the corral of Galindo; from this point as far as the Cañada del Hambre, and along the shores of the Bay of San Francisco, to the mouth of the said Cañada of Pinole to the extent of four square leagues, as shown by the map in the expediente. The quantity granted to be segregated by the proper officer from the larger territory embraced within the boundaries given and the sobrante (surplus) to remain to the use of the nation.

The lands patented to the confirmee by this grant are correctly described upon the Boardman map.

Part of lot No. 4, lots Nos. 5 and 6, lot A, lot No. 7, and part of lot B, as designated on the Boardman map, constitute the sobrante lands of El Pinole.

As we have seen, the San Antonio and Pinole ranchos were granted by fixed and certain natural boundaries, so was also the Moraga rancho, so far as concerns its northern, eastern, and western boundaries. The San Antonio and Pinole being by natural boundaries, and the San Pablo being bounded by these two ranchos and by the Bay of San Francisco, it results that it too was bounded on its northern, western, and southern sides by natural and fixed boundaries, its eastern boundary being an indefinite one, except so far as the diseños and the names of San Pablo (and Cuchiyunes, by which name San Pablo was granted) tended to make it certain.

The rancho of Acalanes was granted to Candelario Valencia in 1834. The decree of concession was for the place known by the name of Acalanes, without any or further description. Afterwards, when the final and formal grant was issued to Valencia, the land granted to him was therein described as the place called Los Acalanes, bounded by the ranchos of San Pablo, San Antonio, and El Pinole; and in its third clause the land granted was limited, on final segregation, to the extent of a league in length by three-quarters of a league in width, as shown by the diseño, the sobrante being reserved to the nation for its convenient uses. That sobrante thus reserved constitutes the subject-matter of the present inquiry. It conclusively appears from the grant itself that the place known by the name of Acalanes, and within which was included

the three-quarters of a league granted to Valencia, was bounded by and coterminous with the ranchos of San Pablo, San Antonio, and Pinole.

It therefore becomes immaterial as to where was the true eastern boundary of the San Pablo, for wherever this may have been located it necessarily constitutes a common boundary between these two contiguous ranchos.

It will therefore be observed that only three boundaries are given in the grant to Valencia, the fourth boundary being left open. Afterwards, in 1844, by the decree of Governor Micheltorena, the Valencia and Moraga ranchos were adjudged to be coterminous, and a common line of boundary was established between them.

It appears that shortly after Valencia obtained his grant he settled near a very desirable spring, at a considerable distance—several miles—from the limits of San Antonio, San Pablo, and Pinole, as shown by the diseños of said ranchos, and near the tract called Laguna de los Palos Colorados, claimed by Joaquin Moraga. In 1844, Valencia and Moraga had a controversy as to the line dividing their claims, and as to the ownership of the spring. The matter was referred to Governor Micheltorena for adjustment, who, in the decree deciding the controversy, made the dividing line between the lands of Valencia and Moraga the same in effect as the northern boundary in the grant given to Moraga. Thus the boundary of the adjacent grant to Moraga became established as the fourth boundary of the Valencia grant by the decree of the governor. This fixed upon the several sides so bounded the exterior limits within which Valencia had a right to select the three-quarters of a league granted to him in 1834, to wit, the boundaries of the ranchos of San Pablo, San Antonio, Pinole, and Moraga. But this still left the Acalanes with an indefinite boundary to the eastward. But the practical location upon the ground by Valencia, and his long and recognized possession, the decree of Micheltorena approving of that location, and the patent from the Government of the United States must, when taken together, be considered as conclusively establishing that the true eastern boundary of the place called Acalanes was at least as far to the eastward as the eastern patented line of that rancho. This tract, thus selected by Valencia with the approval of the Mexican Government, and for which a patent was finally issued to the claimant, not only does not touch upon any of the ranchos by which it was originally declared to be bounded, but it is entirely outside of the three-quarters of a league shown upon the diseños, as the same is explained by some of the witnesses who testified in this case. The object of the diseño was to give information to the government, not to limit or control its action, and in this, as in other cases that have come before this office, the governor, in making the grant, saw fit to disregard the diseño as to the matter of boundaries, referring to it only in fixing the limitation of quantity, and reserving the surplus to the nation. Or, if the diseño is to be treated as making any figure in the grant, the governor has given to it a certain interpretation and affixed to it a defi-

nite meaning by declaring in direct and explicit language that the land granted in the place called Acalanes is bounded by the ranchos of San Pablo, San Antonio, and Pinole.

This it was clearly within the power and functions of the governor to do. It is the final and formal grant, with its apt and certain words of description, that must control, and not the imperfect sketch known as the diseño, which was generally a mere rude tracing made with a pencil, or sometimes with charcoal, by some illiterate herdsman, and purporting to show only a few salient features of the landscape. In some cases the lands described in the final grant cover a much larger area than the tract represented on the diseño; sometimes the lands granted are limited to a small part or corner of the diseños, which are not drawn to any scale. This matter was within the discretion of the governor.

I therefore hold that the sobrante of the Valencia rancho is all the land within the tract bounded by the ranchos of San Antonio, San Pablo, Pinole, and Moraga, and the eastern line of the patented rancho of Valencia, which is left as a remainder after satisfying the three-quarters of a league granted and confirmed to Valencia.

Lot No. 9, and part of Lot B, colored purple on the Boardman map, represent the sobrante lands of the Valencia, and are clearly within the calls of the original grant and the line fixed by Governor Micheltorena.

The survey made by Deputy Surveyor Minto, as aforesaid, is therefore disapproved and set aside, and you are hereby directed to execute a new survey of the rancho El Sobrante, and in said survey to embrace all of tracts Nos. 1, 2, 3, 4, 5, and 6, as designated upon Boardman map, and lying above ordinary high-water mark, according to the Coast Survey map hereinbefore referred to, made under the direction of the government in 1850. Also, to embrace tracts 7, 8, 9, 10, A, B, and C, tracts 11, three times repeated, tracts 12 and D, excepting the patented lands of La Boca Pinole, and the patented lands of San Lorenzo, east of the great bend of the San Leandro Creek, but including that portion of the San Lorenzo rancho lying north and west of the San Leandro Creek, and including, also, all other tracts and parcels of land lying within the general boundaries of the larger tract of territory herein first described that may lie outside of the patented ranchos of San Antonio, San Pablo, Pinole, Valencia, and Moraga, except as aforesaid. The point has been taken and considerable testimony adduced as to the number of leagues which would be included in a survey thus made. The grant of El Sobrante being made to two persons, they could take, under the colonization laws, eleven leagues each. From the evidence, it seems probable that the survey thus ordered would be far within the limit, but should it exceed in quantity the twenty-two leagues allowed by law, the claimants will have the right of selection to that extent, the surplus remaining to the public domain.

You will notify the parties in interest of this decision, and report to this office any proceedings had under said notice. If no appeal be taken within the time allowed by the rules, you will make the survey herein directed and transmit the same to this office, with the proper return, as soon as practicable.

Very respectfully,

J. A. WILLIAMSON, *Commissioner.*

THEODORE WAGNER, Esq.,
United States Surveyor-General, San Francisco, Cal.

333

FINALITY OF

DECREES OF CONFIRMATION

OF

Mexican and Spanish Grants.

OPINIONS

OF

The Judges of the Circuit Court of the United States, for the District of California,

DELIVERED AT SAN FRANCISCO SEPTEMBER 4, 1876,

IN THE CASES OF

UNITED STATES v. BENJAMIN FLINT ET AL.

UNITED STATES v. SAM'L R. THROCKMORTON ET AL.

UNITED STATES v. HORACE W. CARPENTIER ET AL.

SAN FRANCISCO:
SUMNER WHITNEY & CO., LAW PUBLISHERS.
1876.

FINALITY OF

DECREES OF CONFIRMATION

OF

Mexican and Spanish Grants.

U.S. Circuit court, District of California

OPINIONS

OF

The Judges of the Circuit Court of the United States, for the District of California,

DELIVERED AT SAN FRANCISCO SEPTEMBER 4, 1876,

IN THE CASES OF

UNITED STATES v. BENJAMIN FLINT ET AL.

UNITED STATES v. SAM'L R. THROCKMORTON ET AL.

UNITED STATES v. HORACE W. CARPENTIER ET AL.

OPINION

OF

MR. JUSTICE FIELD.

SYLLABUS OF THE DECISION.

1. The obligation to which the United States succeeded, under the stipulation of the treaty by which California was acquired, was political in its character, and provision was made for its discharge by the Act of March 3d, 1851. By this act a special tribunal was created for the settlement of claims to land in California of Spanish and Mexican origin; and the jurisdiction conferred upon the tribunal and upon the Courts empowered to review its decisions was, in its nature, exclusive.

2. Final decrees, touching the validity of such claims, rendered by these tribunals, are conclusive and final between claimants and the United States. Such decrees are not open to review in any Court.

3. The frauds for which judgments are impeachable in Courts of Equity are collateral acts, extrinsic to the merits. They are acts by which the successful party has prevented his adversary from presenting the merits of his case, or by which the jurisdiction of the Court has been imposed upon. The disqualification of the judge by interest or consanguinity; collusion between the parties to obtain a decision injurious to a third person; the purloining of an adversary's testimony; the service of process in such a manner as to defeat its purpose; false representations that the parties are really before the Court; are examples of such frauds as render the judgment impeachable. But, where the matter involved has been once tried, or so put in issue that it might have been tried, the judgment rendered is the highest evidence that the alleged fraud did not exist, and estops the parties from asserting the contrary. The judgment settled the matter otherwise; it became *res judicata*.

4. Purchasers of lands under final decrees of confirmation cannot be disturbed upon charges of fraud in the prosecution of the claims confirmed, and a vague allegation of notice of such fraud. Such purchasers have a right to rest in confidence upon the decrees.

5. After the decision of the Commissioners, the control of proceedings, whether to prosecute an appeal or to dismiss the same, rested exclusively with the Attorney-General; and the propriety or legality of his action in any case was not the subject of review by any tribunal, and it could only be revoked by the Appellate Court upon his own application. In coming to a determination on the subject, he was not restricted to an examination of the transcript transmitted to him; he could look into the archives of the former government, the reports of officers previously appointed to examine into the subject of land titles in the State, the records of the Land Department at Washington, and any correspondence existing between Mexico and the United States respecting the title.

6. When the United States enter the Court as a litigant, they waive their exemption from legal proceedings, and stand upon the same footing with private individuals; and, therefore, if, on a consideration of all the circumstances of a given case, it be inequitable to grant the relief prayed against a citizen, such relief will be refused by a Court of Equity, though the United States be the suitor.

7. In the absence of an Act of Congress, the power of the Attorney-General to institute proceedings to vacate these decrees of confirmation is doubtful.

8. Whether the issue of a previous grant of eleven leagues to a claimant disqualifies him from receiving a second grant, is a question of law, and any error in its decision could be corrected only on appeal.

9. The subject of surveys of confirmed claims is under the control of the Land Department, and its action is not subject to the supervision of the Courts, however erroneous.

IN THE CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF CALIFORNIA.

THE UNITED STATES
vs.
BENJAMIN FLINT ET AL.

Mr. Justice Field delivered the opinion of the Court, as follows:

This is a suit in equity, the main object of which is to set aside and annul the decree of the District Court of the Southern District of California confirming the claim of Teodocio Yorba to the Rancho Lomas de Santiago, situated in the county of Los Angeles, in this State, and to recall and cancel the patent issued thereon by the United States. It is brought by the District Attorney for California, and purports to be on behalf of the United States.

It appears, from the allegations of the bill, and the record to which the bill refers, that, in October, 1852, the claimant—who has since deceased—presented to the Board of Land Commissioners, created under the Act of Congress of March 3d, 1851, to ascertain and settle private land claims

in California, a petition setting forth his claim to the rancho in question, and stating that the same was granted to him in May, 1846, by the Governor of the Department; that the grant had been approved by the Departmental Assembly; that juridical possession of the land had been delivered to him by competent authority, and its boundaries defined; and that he was then and had been previously in its peaceable occupation.

With the petition, and as part thereof, the claimant presented copies of the grant and act of juridical possession, accompanied by a translation of the same, and prayed that the grant be adjudged valid, and confirmed to him. The Board of Commissioners considered the claim thus presented, and took the depositions of several witnesses in support of it, and, in August, 1854, rendered a decree adjudging it to be valid, and directing its confirmation. In November, 1855, a petition was filed on behalf of the United States in the District Court for the Southern District of California, for a review of the decision, alleging that the claim confirmed was invalid, and the decision of the Commissioners erroneous; that the allegations of the claimant in his petition were unsupported by sufficient proof; and denying that he had any right or title to the land confirmed, or to any part of it. The claimant answered this petition, joining issue upon its allegations, and the Court took jurisdiction of the case, heard it anew, and, in December, 1856, rendered its decree, affirming the decision of the Commissioners, and readjudged the claim to be valid. An appeal from this decree to the Supreme Court of the United States was allowed, but the Attorney-General, after some months' deliberation, gave notice that the appeal would not be prosecuted, and thereupon the District Court, upon the consent of the District Attorney, vacated the order allowing the appeal, and gave the claimant leave to proceed upon its decree as a final decree in the case. A survey of the land was subsequently made under the direction of the Surveyor-General of the United States for California, and approved by that officer, and, in February, 1868, a patent was issued to the claimant.

It thus appears, that, after a contest for nearly sixteen years before officers and tribunals of the United States, the claimant obtained a patent from the Government—an instrument designed to give to its holder security and protection in the enjoyment of the property covered by its terms. All the defendants acquired their interests in the land after the decree of confirmation, and two of them after the patent was issued.

Nineteen years after the final decree was thus rendered, and eight years after the patent was issued, the present bill was filed. And as grounds for setting aside and annulling the decree, and recalling and cancelling the patent, the District Attorney alleges upon information and belief: 1st. That the grant and act of juridical possession were made subsequently to the acquisition of the country in 1846, and were fraudulently ante-dated, and that this appears on the face of the original papers on file in the Spanish archives in the custody of the Surveyor-General of the United States; that the claimant fraudulently omitted to exhibit a complete record of the proceedings and only presented extracts from them, and by this suppression the Law Agent of the United States was misled, the United States deprived of all opportunity to contest the confirmation, and the Land Commission and Court were deceived into a confirmation of the claim; and 2d. That previous to the issue of the alleged grant, and as early as 1840, the claimant had obtained from the Mexican nation a grant of eleven leagues, situated in the counties of Sacramento, San Joaquin, and Amador, which was subsequently confirmed by the Supreme Court of the United States; that by the laws of Mexico, a grant for more than eleven leagues could not be made to the same person, and that the claimant was therefore disqualified from receiving any other grant, and that the existence of this prior grant was fraudulently concealed from the Law Agent of the United States, the Land Commission, and the District Court.

The District Attorney also alleges in the bill, upon infor-

mation and belief, that the approved survey is not in conformity with the boundaries given in the diseño, or map accompanying the grant and the act of juridical possession, but embraces a much greater quantity, and was made upon the fraudulent instigation and procurement of three of the defendants. The District Attorney therefore prays, that, in case he fail to obtain the annulment of the decree, and the recall and cancellation of the patent, the boundaries of the tract confirmed may be re-established and fixed in accordance with the views stated by him as to the location intended by the grant and act of juridical possession.

The first inquiry, which naturally arises upon the perusal of this bill, is as to what jurisdiction this Court has to interfere with and review the determinations of the Land Commission and District Court upon the validity of claims to land derived from Mexican or Spanish authorities, and of the Land Department in approving the surveys of the claims confirmed. The questions submitted to the Commission and the District Court were not within the ordinary cognizance of a Court of Law or a Court of Equity. They related to the obligations devolving upon our Government from the concessions of the former Government to its inhabitants. How far these concessions should be respected and how far enforced were the matters to be considered; and in their determination the tribunals were to be governed by the stipulations of the treaty, the law of nations, the laws, usage, and customs of the former government, the principles of equity, and the decisions of the Supreme Court, so far as they were applicable.

By the transfer of California from Mexico to the United States, the rights of private property of the inhabitants were not affected. They remained as under the former government. The public property of Mexico and sovereignty over the country alone passed to the United States. This was in accordance with the rule of public law, which is recognized by all civilized nations, when territory is ceded by one State to another. The obligation, therefore, to protect private rights of property devolved upon the United

States, without any formal declaration to that effect. But, in recognition of this obligation, Mexico obtained from the United States, in the treaty of cession, an express stipulation for such protection. And the term property, as applied to lands and as used in the treaty, comprehends every species of title, perfect or imperfect; "it embraces," says Chief Justice Marshall, "those rights which are executory as well as those which are executed." The United States, therefore, took California bound by the established principles of public law, and by express stipulation of the treaty, to protect all private rights of property of the inhabitants. The obligation rested for its fulfillment in the good faith of the Government, and required legislative action. It could, therefore, only be discharged in such manner, and at such times and upon such conditions, as Congress might in its discretion direct. In its discharge, such action was required as would enable the inhabitants to assert and maintain their rights to their property in the Courts of the country as fully and absolutely as though their titles were derived directly from the United States. Where the titles were imperfect, and such was the condition of nearly all the titles held in the country, further action, by way of confirmation or release from the new government, was essential. With respect to all such titles, and indeed, with respect to all matters dependent upon executory engagements of the government, the ordinary Courts of the United States, whether of Law or Equity, were entirely powerless; they were without jurisdiction, and utterly incompetent to deal with them.

By the Act of March 3d, 1851, the legislative department prescribed the mode in which the provisions of the treaty should be carried out, and the obligations of the Government to the former inhabitants discharged, so far as their rights respected the territory acquired; and thus provided the means of separating their property from the public domain. That act created a Commission of three persons, to be appointed by the President, by and with the advice and consent of the Senate, for the express purpose of ascer-

taining and settling private land claims in the State. It gave a secretary to the Commission, skilled in the Spanish and English languages, to act as interpreter and to keep a record of its proceedings. It provided an agent, learned in the law and skilled in those languages, to superintend the interests of the United States, and it was made his duty to attend the meetings of the Commissioners, to collect testimony on behalf of the United States, and to be present on all occasions when the claimant, in any case, took depositions. To the Commission, every person claiming lands in California, by virtue of any right or title derived from the Spanish or Mexican governments, was required, on pain of forfeiting his land, to present his claim, together with the documentary evidence and testimony upon which he relied in its support. The Commissioners while sitting as a board, and at their chambers, were authorized to administer oaths and take depositions in any case pending before them. The testimony was to be reduced to writing, and recorded in books provided for that purpose. The Commissioners were obliged to hear every case, and decide upon the validity of the claim, and, within thirty days after their decision, to certify the same, with the reasons on which it was founded, to the District Attorney of the district. The act provided also for a review of the decision of the Commissioners, upon petition of the claimant or the District Attorney, setting forth the grounds upon which the validity or invalidity of the claim was asserted. To the petition an answer was required from the contestant, whether claimant or the United States. Subsequently, in August, 1852, the act was changed in this particular, and, when a decision was rendered by the Commissioners, they were required to prepare two certified transcripts of their proceedings and decision, and of the papers and evidence upon which the same were founded—one of which was to be transmitted to the Attorney-General, and the other filed with the Clerk of the District Court, and this filing operated as an appeal on behalf of the party against whom the decision was rendered. In case the decision was against the

United States, the Attorney-General, within six months after receiving the transcript, was required to cause a notice to be filed with the Clerk that the appeal would be prosecuted, or it was to be regarded as dismissed.

Upon the review by the District Court upon the petition or appeal, not merely the evidence before the Commissioners was considered, but further evidence could be taken by either the claimant or the Government; so that, in fact, the whole matter was heard anew, as upon an original proceeding. From its decision, an appeal lay to the Supreme Court of the United States.

As thus seen, the most ample powers were vested in the Commissioners and the District Court to inquire into the merits of every claim; and they were not restricted in their deliberations by any narrow rules of procedure or technical rules of evidence, but could take into consideration the principles of public law and of equity in their broadest sense. When the claim was finally confirmed, the act provided for its survey and location, and the issue of a patent to the claimant. The decrees and the patents were intended to be final and conclusive of the rights of the parties, as between them and the United States. The act, in declaring that they should only be conclusive between the United States and the claimants, did, in fact, declare that as between them they should have that character.

Here, then, we have a special tribunal, established for the express purpose of ascertaining and passing upon private claims to land derived from Spanish or Mexican authorities, clothed with ample powers to investigate the subject and determine the validity of every claim, and the propriety of its recognition by the Government, capable as any Court could possibly be made of detecting frauds connected with the claim, and whose first inquiry in every case was necessarily as to the authenticity and genuineness of the documents upon which the claim was founded.

We have a special jurisdiction of a like nature in the District Court to review the decision made by the Commission, and investigate anew the claim. We have principles

prescribed for the government of both Commission and Court in these cases, and of the Supreme Court, upon appeal from their decisions, not applicable in ordinary proceedings, either at law or in equity. And, as already stated, every person claiming land in the State was required to present his claim for investigation. The onerous duty thus thrown upon him was relieved of its oppressive character by the accompanying assurance, that, when his claim was adjudged valid, the adjudication should be final and conclusive.

On principle, such adjudications cannot be reviewed or defeated by a Court of Equity, upon any suggestion that the Commissioners and Court misapprehended the law, or were mistaken as to the evidence before them, even if that consisted of fabricated papers supported by perjured testimony. The very questions presented by the present bill were necessarily involved in the proceeding before the Commissioners and the District Court, and the credibility of the testimony offered was a matter considered by them. Whether the grant produced by the claimant was genuine, and the claim resting thereon was entitled to confirmation, were the points at issue. The bill avers that the alleged grant was not genuine because it was ante-dated. But the genuineness of the document was the matter *sub judice*, and could not have been established, and the claim based upon it affirmed, except by evidence satisfactory to the Commission and Court, that it was made at the time stated.

It is to no purpose in such case to invoke the doctrine that fraud vitiates all transactions, even the most solemn, and that a Court of Equity will set aside or enjoin the enforcement of the most formal judgments when obtained by fraud. The doctrine of equity in this respect is not questioned ; it is a doctrine of the highest value in the administration of justice, and its assertion in proper cases is essential to any remedial system adequate to the necessities of society. But it cannot be invoked to reopen a case in which the same matter has been once tried, or so put in issue between the parties that it might have been tried.

The judgment rendered in such a case is itself the highest evidence that the alleged fraud did not exist, and estops the parties from asserting the contrary. It is afterwards mere assumption to say that the fraud was perpetrated. The judgment has settled the matter otherwise; it is *res judicata*.

The frauds for which Courts of Equity will interfere to set aside or stay the enforcement of a judgment of a Court having jurisdiction of the subject-matter and the parties, must consist of extrinsic collateral acts not involved in the consideration of the merits. They must be acts by which the successful party has prevented his adversary from presenting the merits of his case, or by which the jurisdiction of the Court has been imposed upon.

All litigants are equally entitled to justice from the tribunals of the country; they have equally a right to an impartial judge; they can claim equal opportunities of producing their testimony and presenting their case, and they can equally have the advocacy of counsel. Whenever one party by any contrivance prevents his adversary from having this equality with him before the Courts, he commits a fraud upon public justice, which, resulting in private injury, may be the ground of equitable relief against the judgment recovered. Thus, if, through his instrumentality, the witnesses of his adversary be forcibly detained from the Court, or bribed to disobey its subpœna, or the testimony of his adversary be secreted or purloined, or if the citation to him be given under such circumstances as to defeat its purpose, a fraud is committed, for which relief will be granted by a Court of Equity, if it produce injury to the innocent party. Any conduct of the kind mentioned would tend to prevent a fair trial on the merits, and thus to deprive the innocent party of his rights. So, if a judge sit when disqualified from interest or consanguinity; if the litigation be collusive; if the parties be fictitious; if real parties affected are falsely stated to be before the Court, the judgment recovered may be set aside, or its enforcement restrained, for in all these cases there would be the want of the judicial impartiality or the actual litigation

which is essential to a valid judicial determination. To every such case the words of the jurist would be applicable: *Fabula, non judicium, hoc est; in scena, non in foro, res agitur.*

The credibility of testimony given in a case, bearing upon the issue, is not an extrinsic collateral act, but is a matter involved in the consideration of the merits; and the introduction of false testimony, known or shown to be so, does not affect the validity of the judgment rendered. In every litigated case where the interests involved are large, there is generally conflicting evidence. Witnesses looking at the same transaction from different standpoints, give different accounts of it. The statements of some are unconsciously affected by their wishes, hopes, or prejudices. Some, from defective recollection, will blend what they themselves saw or heard with what they have received from the narration of others. Uncertainty as to the truth in a contested case will thus arise from the imperfection of human testimony. In addition to this source of uncertainty may be added the possibility of the perjury of witnesses, and the fabrication of documents. The cupidity of some and the corruption of others may lead to the use of these culpable means of gaining a cause. But every litigant enters upon the trial of a cause, knowing not merely the uncertainty of human testimony when honestly given, but that, if he has an unscrupulous antagonist, he may have to encounter frauds of this character. He takes the chances of establishing his case by opposing testimony, and by subjecting his opponent's witnesses to the scrutiny of a searching cross-examination. The case is not the less tried on its merits, and the judgment rendered is none the less conclusive, by reason of the false testimony produced. Thus, if an action be brought upon a promissory note, and issue be joined on its execution and judgment go for the plaintiff, and there is no appeal, or if an appeal be taken, and the judgment be affirmed, the judgment is conclusive between the parties, although, in fact, the note may have been forged and the witnesses who proved its execution may have committed perjury in their testimony.

The rules of evidence, the cross-examination of witnesses, and the fear of criminal prosecution with the production of counter testimony, constitute the only security afforded by law to litigants in such cases. A Court of Equity could not afterwards interfere upon an allegation of the forgery and false testimony, for that would be to reopen the case to a trial upon the execution of the note, which had already been *sub judice*, and passed into judgment.

These views are in consonance with the adjudged cases. We have looked in vain through all those cited by the learned associate counsel in the Throckmorton Case for anything infringing upon them. In the Duchess of Kingston's Case, the sentence of the Spiritual Court was held to be fraudulent and void, because obtained by collusion of the parties. And, in giving the opinion of the judges to the House of Lords, Chief Justice De Grey observed that, although a judgment was conclusive evidence upon the point involved, and could not be impeached from within, yet, like all other acts of the highest judicial authority, could be impeached from without, and that fraud was *an extrinsic collateral act* which vitiated the most solemn proceedings of Courts of Justice.

In the Shedden Case, (1 Macqueen, 535) the question was whether a judgment of the Court of Sessions of Scotland against the legitimacy of the plaintiff, affirmed by the House of Lords, could be attacked in another suit in the inferior Court, and treated as a nullity for collusive suppression of proof which would have established his parents' marriage. The House of Lords held that the judgment could be thus attacked, but that the allegations of fraud and collusion in the case were not sufficiently specific, pointed, and relevant to be admitted to proof. Opinions in the case were given by the Chancellor and two of the Law Lords, Brougham and St. Leonards. The judgment of the House of Lords, said Brougham, was to be "dealt with in the inferior Court before which its merits were brought; that is to say, not the merits of the judgment, but the merits of

the parties who had so fraudulently obtained it—the question being, was it a real judgment or not? For that is *the only question in such cases*, and that is the question in this case."

In Fermor's Case, (2 Coke, 77) the tenant continued to pay rent to his landlord after he had levied a fine with proclamation to bar the inheritance, and thus kept the latter in ignorance of that proceeding. The tenant attempting, after the expiration of the lease, to hold the property on the ground that the right of the landlord was barred by the lapse of time allowed by statute to make an entry or bring his action after the fine, the Court, upon a bill filed for relief, held that he was not barred, by reason of the deception practiced upon him. The payment of the rent was in fact a declaration by the tenant that his relation to the landlord had not changed, and operated as a fraud preventing the latter from asserting his rights.

Great stress is placed by the learned associate counsel upon these last two cases, but it is evident, from the statement we have made, that the fraud alleged in both cases was an extrinsic collateral act which prevented the complaining party, in the one instance, from having the merits of his case considered, and in the other instance, from taking proceedings for his protection. So in all the other cases, extrinsic collateral acts of fraud will be found to constitute the grounds upon which the Court has acted. And on principle it must be so, for if the merits of a case could be a second time examined by a new suit, upon a suggestion of false testimony, documentary or oral, in the first case there would be no end to litigation. The greater the interests involved in a suit, the severer generally the contention; and in the majority of such cases, the recovery of judgment would be the occasion of a new suit to vacate it, or restrain its enforcement. If the present bill could be sustained upon the grounds alleged, and we should set aside the decree of the District Court, a new bill might years hence be filed to annul our judgment and reinstate the original decree, on the same grounds urged in this case, that fabricated

papers and false testimony had been used before us, which eluded the scrutiny of the counsel and escaped our detection. Of course, under such a system of procedure, the settlement of land titles in the State would be postponed indefinitely, and the industries and improvements which require for their growth the assured possession of land, would be greatly paralyzed.

For the reasons stated, we are of opinion that there is no ground of fraud presented by the bill for the interference of a Court of Equity with the decree of confirmation rendered by the District Court. It is upon that ground alone that the bill proceeds. It is not a bill of review for new matter, discovered since the decree. A bill of that character can only be filed by leave of the Court; and that cannot be obtained without a showing that the new matter could not have been used in the original cause, and could not previously have been ascertained by reasonable diligence. It does not lie where the decree in the original cause was obtained by consent, or where objections to the decree rendered were subsequently withdrawn and consent was given to its execution. And it can only be allowed by a Court possessing the power, upon a review of the case, to determine the rights of the parties to the property, or in the matter involved, or, at least, authorized to remit the case to a tribunal having adequate jurisdiction for that purpose. The present bill was not filed upon leave; and this Court possesses no power to determine the right of the claimant, upon any review of the case, to a confirmation of his claim, and the only tribunal to which such a determination could be remitted has long since ceased to exist.

But there are other and equally potential grounds against the maintenance of the present suit. The Land Commission and the District Court, though exercising a special jurisdiction, were invested with very large and extensive powers. They were not, as already stated, bound in their decisions to any strict rules of technical law, but could be governed by the principles of equity in their widest scope. The result of their inquiries was to guide the Government

in the discharge of its treaty obligations. Considerations, therefore, which could not be presented to ordinary tribunals, might very properly be regarded by them.

After the determination of the Commissioners, if against the United States, the control of the proceedings was placed with the Attorney-General. It rested with him exclusively to determine whether the appeal from the Commissioners, taken by filing a copy of the transcript with the Clerk of the District Court, should be prosecuted or dismissed. So also when an appeal was taken from the decree of the District Court, he could, in the same way, direct its prosecution or dismissal. Considerations of policy, as well as of strict right, might be deemed by him sufficient to control his action in this respect. In coming to a determination on the subject, he was not restricted to an examination of the transcript transmitted to him: he could look into the archives of the former government, the reports of officers previously appointed to examine into the subject of the land titles of the State, the records of the Land Department at Washington, and any correspondence existing between Mexico and the United States respecting the title. His power was unlimited, and the propriety or legality of his action in any case was not the subject of review by any tribunal whatever, and it could only be revoked by the appellate Court upon his own application.

In the case of Yorba, the appeal from the decree of confirmation, rendered by the District Court, was dismissed upon notice of the Attorney-General that the appeal would not be prosecuted, and thereupon the decree became final. The decree was thus assented to by the highest legal officer of the Government, specially charged with supervision over the subject. The validity of the decree, and of the grant upon which the claim of Yorba was founded, was thus forever put at rest. From that day it could never be successfully questioned in any form of procedure, or by any tribunal known to our laws. It was a closed question for all time.

But this is not all. The defendants purchased their interests

after the final decree. They are charged in the bill, it is true, generally, with notice of the alleged frauds of the claimant; but how, or where, or in what manner they had notice, is not averred. The vagueness of the allegation gives it only the weight of mere clamor. But, assuming that the defendants had sufficient notice to put them upon inquiry, they had at the same time notice of the decree, which was an adjudication—the highest possible evidence—that the alleged frauds had no actual existence, and that to this adjudication the Government, through its Attorney-General, had consented. They had a right, therefore, to rely implicitly upon the decree, and rest in confidence upon the assurance of its finality, given by the only officer of the United States who could question it. They can, therefore, justly insist upon protection in the property purchased; and no Court of Equity, under the circumstances, would lend its aid to the commission of so great a wrong as the destruction of their title.

Where the District Attorney of this district obtains authority to institute in the name of the United States a suit for that purpose, we are not informed. There is no law of Congress which requires it or allows it; and we have sought in vain for the power of the Attorney-General to direct it. That officer can, it is true, institute or direct the institution of suits for the revocation and cancellation of patents of lands belonging to the United States, issued upon false and fraudulent representations to the executive officers of the Land Department, or upon their misconstruction of the law. He is the legal adviser of the heads of the executive departments, and if they are fraudulently imposed upon, or have mistaken the law, he can take the necessary legal proceedings to recall the results of their action. But that is a very different matter from instituting or directing proceedings to vacate or recall patents founded upon decrees of a Commission or Court exercising a special and exclusive jurisdiction over the subjects investigated, where the law declares that such decrees shall be final and conclusive between the parties, and to which decrees the

Attorney-General in office at the time assented. Those decrees established the obligation of the United States to the claimants under the treaty, and if the legislative department, which authorized the proceedings before the Commission and Court, be satisfied with the result, it is difficult to see upon what pretense the Attorney-General can seek to disturb it. If the Attorney-General, by virtue of his office, possesses any such extraordinary power, as claimed in the case, to disregard the action of his predecessor, and to renew litigation at his pleasure respecting the titles of a whole people, upon a suggestion that false testimony may have been used in the original proceedings, the security which the holders of patents from the Government issued upon such decrees, have hitherto felt in their possessions, is unfounded and delusive. We must have further evidence than is presented to us, before we can admit the existence of a power so liable to abuse, and so dangerous to the peace of the community.

But if we admit that the Attorney-General is authorized to direct the institution of a suit like the present, in the name of the United States, and that the District Attorney has been thus directed, his power in this respect must be exercised in subordination to those rules of procedure and those principles of equity which govern private litigants seeking to avoid a previous judgment against them. The United States, by virtue of their sovereign character, may claim exemption from legal proceedings, but when they enter the Courts of the country as a litigant they waive this exemption, and stand on the same footing with private individuals. Unless otherwise provided by statute, the same rules as to the admissibility of evidence are then applied to them; the same strictness as to motions and appeals is enforced; they must move for a new trial or take an appeal within the same time and in like manner, and they are equally bound to act upon evidence within their reach. And, when they go into a Court of Equity, they must equally present a case by allegation and proof entitling them to equitable relief.

Although, on grounds of wise public policy, no statute of limitations runs against the United States, and no laches in bringing a suit can be imputed to them, yet the facility with which the truth could originally have been shown by them if different from the finding made ; the changed condition of the parties and of the property from lapse of time ; the difficulty, from this cause, of meeting objections which might, perhaps, at the time, have been readily explained ; and the acquisition of interests by third parties upon faith of the decree, are elements which will always be considered by the Court in determining whether it be equitable to grant the relief prayed. All the attendant circumstances of each case will be weighed, that no wrong be done to the citizen, though the Government be the suitor against him.

The bill in the present case not only does not disclose, as already shown, any extrinsic collateral acts of fraud constituting grounds for equitable relief, but alleges that the ante-dating of the grant and act of juridical possession, which form the gravamen of complaint, appear on the face of the original documents on file in the archives in the custody of the Surveyor-General of the United States. If this be so, the Law Agent should have shown the fact by the production of the originals. He should have inspected original documents in all cases where copies alone were offered by the claimant, whether suspicions were excited or not as to their genuineness. The law of Mexico with respect to the alienation of her public lands was well known at the time. It had been the subject of reports to the Government by agents employed to look into the grants of the former government, and of consideration and comment by the Courts in numerous instances. That law pointed out the proceedings required for the acquisition of titles of land from Mexico, and showed that a record of them was required to be kept. That record was in the possession of the United States, and should have been examined by the Law Agent of the Government whenever any of its entries or documents were the foundation of a claim. He was appointed for the express purpose of looking after and protecting the

interests of the United States. The allegation that the claimant was guilty of a fraudulent suppression in not producing all the documents in the archives respecting his title is puerile. He produced all that was necessary to present his claim, and if the Law Agent was not satisfied with them, he should have made his objection at the time. The archives were not in an "unsearchable condition," as alleged, until 1858, but even if they had been, the Law Agent could still have insisted upon the production of the originals for inspection.

After the archives were arranged and the alleged "unsearchable condition" ceased, nearly eighteen years elapsed before the present bill was filed, and no excuse is offered for this delay. During these eighteen years, which constitute a period equivalent almost to a century in other countries, great changes in the condition and value of real property in the State have occurred. During this period, the original claimant, who might perhaps have explained the alleged alteration of dates, has deceased, and third parties have acquired his interests, and, it is said, have made valuable and expensive improvements upon the property. Courts of Equity will not entertain a suit to vacate a decree, even in case of palpable frauds, when there has been unnecessary delay in its institution, and the rights of third parties, as in this case, have intervened in reliance upon the decree. Considerations of public policy require prompt action in such cases, and if, by delay in acting, innocent parties have acquired interests, the Courts will turn a deaf ear to the complaining party. This is the doctrine of equity, irrespective of any statute of limitations, and irrespective of the character of the suitor. It is essential that this doctrine should be vigorously upheld for the repose of titles and the security of property.

It only remains to notice the allegations of the bill with respect to a previous grant of eleven leagues, stated to have been obtained by the claimant from the Mexican nation in 1840, and the allegation that the approved survey of the

claim confirmed was not in accordance with the map accompanying the grant, and the act of juridical possession.

Whether the issue of a previous grant to the claimant for the quantity designated would have disqualified him from receiving a second grant, was a question of law, to be determined by the Commissioners and District Court; and any error committed in its determination could only be corrected on appeal. And the allegation of fraudulent concealment by the claimant of the existence of the prior grant is an idle one in the face of the fact that the Mexican law, of which the Court is bound to take notice, required a record of every grant to be kept, and that this record, with other public property, passed to the United States on the cession of the country. If there was any such grant as stated, so far from its existence being concealed by the claimant, the evidence of its existence was in the custody of the Government, and its attention had been specially directed to the document by agents appointed to ascertain what grants had been made by the former government, who examined the records and reported a list of all grants found among them. Allegations thus in conflict with the public records and public history of the country need not be specially controverted any more than allegations at variance with the settled law. A fraudulent concealment by the claimant of a public record, never in his possession, but always in the keeping of the Government, and open at all times to the inspection of the world, was a thing impossible. The bill might with as much propriety have alleged that the claimant concealed from the Court one of the public statutes of the country.

As to the alleged error in the survey of the claim, it need only be observed that the whole subject of surveys upon confirmed grants, except as provided by the Act of 1860, which did not embrace this case, was under the control of the Land Department, and was not subject to the supervision of the Courts. Whether the survey conforms to the claim confirmed or varies from it, is a matter with which the Courts have nothing to do; that belongs to a depart-

ment whose action is not the subject of review by the judiciary in any case, however erroneous. The Courts can only examine into the correctness of a survey when, in a controversy between parties, it is alleged that the survey made infringes upon the prior rights of one of them; and can then look into it only so far as may be necessary to protect such rights. They cannot order a new survey, or change that already made.

It follows, from the views we have expressed, that the demurrer to the bill must be sustained; and as no amendment would reach the principal objection, namely, that the alleged frauds are not such extrinsic collateral acts as would justify the interference of equity with the decree of confirmation, the bill must be dismissed.

The principal objection to the bill in this case applies with eqnal force to the bills in the Throckmorton and Carpentier Cases, and the demurrers in those cases will also be sustained, and the bills dismissed. The allegation in the Throckmorton Case, that the defendant Howard had notice of the fabrication of the papers from the claimant, given in other proceedings before the Board, and other allegations imputing guilty knowledge to him and to the other defendants, are too vague and general to merit consideration, made as they are in a bill not verified and only upon information and belief. The District Attorney should at least have stated the sources of his information and the grounds of his belief, that the Court might see that the former was something better than idle rumor, and the latter something more than unfounded credulity.

The defendant, Howard, has filed an answer denying under oath, generally, and specifically, every charge against him, but by stipulation on the argument, he is to have the benefit of the decision upon the demurrer.

As the questions presented in the several cases are of vast importance to the people of this State, the District Judge, whose great experience in the examination of land cases gives weight to his views, will read a concurring opinion with special reference to the Carpentier Case.

Our judgment is, that the demurrers be sustained in the three cases, and the bills be dismissed; and it is so ordered.

FIELD, Presiding Justice.

We concur:

SAWYER, Circuit Judge.
HOFFMAN, District Judge.

OPINION

OF

JUDGE HOFFMAN.

IN THE CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF CALIFORNIA.

UNITED STATES v. BENJAMIN FLINT ET AL.
UNITED STATES v. SAM'L R. THROCKMORTON ET AL.
UNITED STATES v. HORACE W. CARPENTIER ET AL.

JUDGE HOFFMAN delivered the following concurring opinion :

As the principal questions involved in these cases are the same, they have been argued and submitted together.

For convenience of treatment, I have confined my attention, in this opinion, to the case of U. S. *v.* Carpentier ; but the views expressed will apply to all.

THE UNITED STATES
vs.
HORACE W. CARPENTIER ET ALS.

The bill in this case in substance alleges that on the 9th May, 1852, Victor Castro and Juan José Castro presented to the Board of Commissioners for ascertaining and settling private land claims in California, a petition praying a confirmation of their title to a certain sobrante or surplus of lands lying between the Ranchos of San Antonio, San Pablo, Pinole, Moraga, and Valencia. That in support of this claim

the defendant Carpentier, as attorney for the other defendants, presented to the Board certain documentary proofs in the bill particularly mentioned.

That the Board of Commissioners considered the claim, and on the 3d day of July, 1855, rendered an opinion thereon, and, on the same day, rendered a final decree therein, adjudging "the claim of the said petitioners, Juan José and Victor Castro, to be valid, and decreeing that the same be and is hereby confirmed."

That afterwards, on or about the 6th day of February, 1856, a certified copy of said proceedings and decree was duly filed with the Clerk of the United States District Court for the Northern District of California.

That on the 4th April, 1856, a notice was filed from the Attorney-General of the United States, to the effect that the appeal from the decision of the Board of Commissioners would be prosecuted by the United States.

That on the 6th April, 1857, a further notice from the Attorney-General was filed, to the effect that the appeal would not be prosecuted by the United States, and on the same day a stipulation was signed by Wm. Blanding, Esq., District Attorney, and by the attorney for the claimants, consenting that the appeal be withdrawn and dismissed. Upon which notice and stipulation an order was made by the District Court, dismissing the appeal and giving leave to the claimants to proceed under the decree of the Board of Commissioners as under final decree.

That since said date no other proceedings have been had in said case or claim.

The bill further charges that the documentary evidence so presented to the Board by the claimants, was forged, fraudulent, ante-dated, and fabricated—in pursuance of a conspiracy entered into by Juan José and Victor Castro, Juan B. Alvarado, and Francisco Arce, whose names appear on the said documents. That the said simulated petition and grant were so forged, fabricated, and ante-dated with the full knowledge and consent of the defendants, Carpentier and Adams, and that they have, from the date of said

forgery, claimed and asserted title to the said Sobrante lands, or a portion thereof.

The bill further charges, that in the proceedings before the Board, the defendants, Carpentier, Adams, and Castro, and their assistants, intentionally and fraudulently suppressed and failed to present to the said Board the grants which had been made by the Government of Mexico of the said ranchos of San Antonio, San Pablo, Pinole, Moraga, and Valencia, with intent to conceal from the Law Agent and from the said Commissioners the fact that the said pretended Sobrante had been ante-dated as aforesaid, and that if said grants had been presented, it would have appeared that two of the said ranchos were not granted until several months subsequently to the date of the said pretended Sobrante grant.

That by the said fraudulent misrepresentations, concealment, and suppression, the Law Agent was deceived and misled, and the United States deprived of *all* opportunity to contest the confirmation of said grant, on the grounds aforesaid, and the said Commissioners were likewise deceived and misled, and induced to confirm the grant to the manifest detriment of the United States.

That the bill further avows that the facts aforesaid were not discovered by the United States until long after the said grant had been confirmed, and not until within one year next preceding the filing of this bill, and "that said facts have been derived from the information of living witnesses, from an examination of the archives, from Court records, and from other sources."

The prayer of the bill is that by the decree of this Court the said grant be declared fraudulent and invalid, and that the confirmation thereof was obtained by fraud; that the dismissal of the appeal in the District Court was obtained by fraud; that said grant and confirmation be annulled and set aside; and that said defendants, and each of them, be forever estopped from asserting any title to said lands under said pretended grant or decree of confimation, pur-

chase, or possession; and that the same are public lands of the United States.

The defendants have demurred to the bill on the ground that this Court has no jurisdiction of the subject-matter of the suit.

By the ninth article of the Treaty of Guadalupe Hidalgo, it was stipulated "that Mexican citizens shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without molestation."

To enable the United States to fulfill this obligation, it was necessary to provide means for ascertaining what lands in the ceded territory were held in private ownership, and of what lands the title passed to the United States.

The means adopted were the instrumentalities and proceedings provided in the Act of March 3d, 1851.

Its title expresses its object. It is entitled "An Act to *ascertain* and *settle* private land claims in California."

The first section provides that, for the purpose of ascertaining and settling private land claims in California, a Commission shall be constituted, consisting of three Commissioners, etc. By subsequent sections, it is made the duty of the Commissioners to examine the claims submitted to them, and to decide upon their validity, and rules are prescribed by which their decisions shall be governed.

The fourth section provides for the appointment of a Law Agent, whose special duty it shall be "to superintend the interests of the United States" in the premises, to attend the meetings of the Board, to collect testimony in behalf of the United States, to attend at the taking of depositions by the claimants, and no deposition is allowed to be read in evidence unless taken on notice in writing to the agent or to the District Attorney, if the case is appealed to the District Court. Other sections confer upon the District Court jurisdiction to hear the cause *de novo* on appeal, and particularly prescribe the manner in which appeals shall be taken and the proceedings conducted; and finally the right of appeal to the Supreme Court is given to either party.

The final decrees rendered by the Commissioners, or by the District or Supreme Courts, or any patent issued under the Act, are by Section 15th declared to be conclusive between the United States and the said claimants, but shall not affect the interests of third persons.

The submission of their claims to the tribunal thus constituted was not left to the choice of the claimants.

By Section 8, each and every person claiming lands by virtue of any right or title derived from the former governments of California, was required to present the same, together with the documentary evidence and testimony of witnesses relied on, to the Board, and the thirteenth section declares that all lands, the claims to which shall not have been presented to the Commissioners within two years after the date of the act, shall be deemed held and considered as part of the public domain of the United States.

This act, although benevolently designed, has in its practical operation imposed a grievous, though perhaps, unavoidable burden upon the holders of Mexican titles in this State. They have been subjected to the expense and delay of a litigation which, after the lapse of more than twenty-five years, can scarcely be said to have terminated.

To whatever criticisms the Act of 1851 may be obnoxious, it certainly cannot be reproached for having failed to guard the interests of the United States in the amplest manner.

The appeals to the District Court from the decisions of the Board gave to both parties, in every case, the benefit of a trial *de novo* on the merits, with the unrestricted right to take further proofs. Six months were allowed to the party against whom the Board had decided, to determine whether or not the appeal should be prosecuted. From the decree of the District Court an appeal was allowed to the Supreme Court, to be taken at any time within five years, and even when the cause had reached the Supreme Court it might still be remanded for further proof, in case the evidence with regard to the validity of the claim was deemed to be unsatisfactory.

United States *v.* Teschmaker, 22 How. 392.

United States *v.* Pico, Ibid, 404.
United States *v.* Vallejo, Ibid, 416.
United States *v.* Cambuston, 20 How. 59.

Such were the means adopted by the Political Department of the Government to enable it to discharge its treaty obligations with intelligence and justice. It, in effect, called to its assistance the Courts, and for that purpose invested them with a jurisdiction in all respects special and extraordinary, and which, except for the act, they would not have possessed.

Foster *v.* Neilson, 2 Pet. 314.
United States *v.* Arredondo, 6 Pet. 742.
Beard *v.* Federy, 3 Wall. 492.

The treaty is a contract made by the nation acting through the political branch of its government. Its execution is confided to that branch of the Government alone. And until it has provided the means and ordained the mode of its execution, no Court has authority to decide what cases fall within its provisions, or what titles the United States is bound to respect.

A fortiori must the ordinary Courts be without jurisdiction, when the political power has confided the whole subject to special tribunals, whose final decrees it has declared shall be conclusive.

In the case of United States *v.* Arredondo, (6 Pet. 742) Mr. Chief Justice Marshall says, "should we be called on to decide on the validity of a title acquired by any Spanish grant not embraced by these laws," (*i. e.* the laws of 1824 and 1828, which conferred the special jurisdiction) "we should feel bound to follow the course pursued in Foster *v.* Neilson, in relation to the stipulation in the eighth article of the Florida Treaty, that the Legislature must execute the contract before it can become a rule for this Court."

It is urged that a Court of general equity jurisdiction may take cognizance of this bill, because of the fraud it alleges.

The fraud principally relied on is the presentation to the Board of certain documentary evidences of title, which the parties presenting them knew to be forged and antedated.

But these documents were presented to a tribunal created for the sole purpose of investigating and deciding upon their validity; and of this genuineness was the first and indispensable element. The question, therefore, presented to this Court on the allegation of fraud, is precisely the question presented to the Board and to the District and Supreme Courts, and of which the act gave to those tribunals exclusive cognizance; and the maintenance by this Court of its jurisdiction in this case involves the assumption of the jurisdiction to review and reverse the final decisions of the Board, the District and the Supreme Courts, on the very issues presented for their determination.

Nor is this all. The jurisdiction of this Court is not claimed to exist by reason of its relation to the District Court as a superior tribunal, nor because the law has committed to it any authority to pass upon titles of this description.

Its inherent jurisdiction as a Court of general equity powers is alone appealed to. But if it derives its jurisdiction from that source alone, no reason is perceived why the Attorney-General might not, had he seen fit, have invoked the same jurisdiction in any State Court to which similar powers have been confided. And the anomaly might thus have been presented of a State Court determining the rights and duties of the United States under a treaty, and reviewing and reversing the decision of the Supreme Court of the United States on a subject-matter of exclusively national concernment, and of which the political department of the National Government or the tribunals of its selection have exclusive cognizance.

The provision in the Act of 1851, which declares the final decrees of the Board and of the District and Supreme Court to be conclusive as between the United States and the claimants, has already been cited.

It will not be disputed that, if the allegations in this bill

are sufficient to show jurisdiction, every case heretofore decided under the provisions of the act may be reopened for examination in this Court on its merits, whenever the Attorney-General or those to whom he may delegate his authority consider themselves justified in alleging that false and fabricated documentary evidence of title has knowingly been presented.

Before this can be allowed, we must first deprive the clause in the act, which declares that final decrees made under its provisions shall be conclusive, of all significance and effect.

It is urged, however, that all final judgments of Courts of competent jurisdiction are conclusive, and that the conclusiveness attributed by the act to final decrees in this class of cases is no greater than that possessed by other final decrees. All may be impeached for fraud; for "fraud vitiates the most solemn judgments."

The general proposition may be conceded, but the question recurs: Is the fraud charged in this bill such as a Court of general equity jurisdiction can take cognizance of under the circumstances of this case, and such as will destroy the conclusiveness of the final decree in the former proceedings?

The validity of an alleged Mexican or Spanish claim depends upon the genuineness of the title-papers, and upon their legal effect as translative of title.

The first is the most difficult, and frequently the only point in controversy.

To deny the conclusiveness of the decree on the question of genuineness is to deny it on the principal point submitted for adjudication.

If Mexico, solicitous to secure the rights of its citizens of the ceded territory, had demanded of the United States what means the latter would adopt for their maintenance and protection; and the United States had stipulated in the Treaty that the means should be those provided in the Act of 1851, and had further declared that the investigation should be conducted as between equal litigants before a Court of justice, and that the result of the inquiry should

be conclusive of the rights of both parties—would it be compatible with good faith for the United States to contend that under these stipulations there was tacitly reserved to itself a right, not conceded to its antagonist, to reopen and re-examine before a tribunal not mentioned in the Treaty the identical questions which it had agreed should be finally determined in another mode; and that it could do this at any time, however remote from the date of the final determination, and no matter how ample had been its opportunities for investigation, on the plea that the Statute of Limitations does not run against the Government, and that no laches can be imputed to a sovereign ?

Could it maintain the true construction of the treaty to be that the final decrees of its tribunals adjudging grants to be genuine should be conclusive, *provided* the grants *were* genuine, and that *that* question it could always reopen before the ordinary tribunals ?

It is believed that no representative of the political department of this Government would contend for such a construction of the treaty stipulation supposed, and a similar construction of identical provisions in an Act of Congress must be equally rejected by the Court.

To accept it would be to make the title of the act "An Act to ascertain and *settle* private land claims in California" a misnomer, and the pledge that the result of the proceedings it directs, shall be conclusive—a delusion.

By the treaty with Spain of February 22d, 1819, the United States exonerated Spain from all demands in the future on account of certain specified claims of its citizens, and agreed to make satisfaction of the same to an amount not exceeding four millions of dollars. To ascertain the amount and validity of these claims, it was stipulated that a Commission, to consist of three Commissioners, etc., should be appointed "to receive and *examine*, *and decide* upon the *amount* and *validity* of all claims included with the description mentioned."

With respect to the decisions of these commissioners, the Supreme Court says:

"The object of the treaty was to invest the Commissioners with full power and authority to receive, examine, and decide upon the *amount* and *validity* of the asserted claims upon Spain for damages and injuries. *Their decision within the scope of their authority is conclusive and final. If they pronounce the claim valid or invalid, if they ascertain the amount, their award in the premises is not re-examinable. The parties must abide by it as the decree of a competent tribunal of exclusive jurisdiction. A rejected claim cannot again be brought under review in any judicial tribunal. An amount once fixed is a final ascertainment of the damages or injury. This is the obvious purport of* the language of the Treaty."

Comegys *v.* Vasse, 1 Peters, 212.

If we substitute for the word "treaty" in this extract the words "Act of 1851," the language will admit of almost literal application to the case at bar.

The claims to be presented to the Commission under the treaty with Spain were claims to indemnity for injuries. The claims to be presented to the Board under the Act of 1851 were claims to lands. In the former case, the treaty itself provided for the constitution of the Commission. In the latter, the treaty stipulated in general terms for the protection of the inhabitants of the ceded territory in their rights of property, and an act of Congress confided the duty of ascertaining those rights to a Commission established by its own authority, with appeals to the National Courts. But these differences make no distinction in principle between the two cases.

The authority of the Commission, in the one case, and that of the Board of Commissioners and the Courts, in the other, are alike exclusive. And the awards of the one and the decrees of the other are alike conclusive of the rights of the parties. The assumption of a jurisdiction by a Court of Equity to re-examine final decrees made under the Act of 1851 involves in principle the assumption of jurisdiction to re-examine all awards made by special commissions constituted under treaties with foreign nations.

Among the great number of claims to lands in the territories ceded to the United States by France and Spain, it is not to be supposed that many fraudulent titles may not have escaped the scrutiny of the tribunals appointed to determine their validity.

It is a significant circumstance that in no case, so far as the judicial history of the country informs us, has the United States, on discovering the fraud, attempted to cause the re-examination before the ordinary tribunals of a finally confirmed claim.

In the case of Sampeyreac, (7 Pet. R. 222) which is the only reported case where a re-examination was made, it was done by virtue of a special act of Congress, which authorized the proceeding, not before the ordinary tribunals, but by bill of review in the special tribunal upon which the original jurisdiction over the cause had been conferred. Whether or not by virtue of that jurisdiction it might have entertained a bill of review to set aside its own decree, the Supreme Court does not decide. An Act of Congress seems to have been deemed necessary to confer the authority. But it is nowhere intimated that any Court of equity powers, but upon which no authority to pass upon the validity of claims of that description had been conferred, could have entertained such a bill, or in any other form have re-examined the questions finally decided by the special tribunal.

The case was one of admitted forgery. But it was nevertheless contended by counsel that, the decree of the Court being conclusive between the parties, Congress had no power to authorize the review, or to disturb vested rights. The Supreme Court, without passing upon the general proposition, overruled the objection, on the ground that Sampeyreac was admitted to be a fictitious person, and that, therefore, there had been no real parties before the Court between whom the decrees could be conclusive.

The position taken by counsel in this case may, perhaps, be extreme and untenable. In deciding the case at bar, it is not necessary to assert that, where a fraudulent title has

been confirmed, the United States is entirely without remedy, nor that the political department of the Government may not, if it sees fit, invest the Courts with authority to re-examine the questions which, as the law now stands, remain finally decided in these cases. But, until Congress has so expressed its will and conferred the requisite authority, it may confidently be affirmed that the ordinary tribunals are without jurisdiction.

The counsel for the United States has drawn a vivid picture of the avowed forger glorying in his crime, defying the justice he has duped, and demanding that the officers of the Government shall, by issuing to him his patent, assist him in consummating his fraud.

In discussing a dry question of jurisdiction, such appeals are, perhaps, not quite appropriate.

But, if the practical bearings of the questions to be decided are fit subjects for consideration, it may be observed that the question is not whether an admitted forger shall be allowed to enjoy the fruits of his crime, (for the demurrer admits the truth of the allegations of the bill only hypothetically, and for the purposes of the argument) but whether every title in this State derived from the former governments shall be subjected to the ordeal of a new litigation whenever the Attorney-General, or those who may obtain his ear by, it may be, false or interested representations see fit to allege in an unsworn bill that the documentary evidence on which the title rests is forged or ante-dated.

If, without the authority of Congress, and on such representations, a cloud can be cast upon titles in this State, the effect would be little short of a public calamity. The repose of ancient possessions would be disturbed, and the security of titles, long since and after protracted litigation adjudged to be valid, would be menaced. A tremendous weapon of vexation, oppression, or extortion might be placed in the hands of unscrupulous persons, and the horde of professional witnesses which has so long infested the Courts in this class of cases might resume their trade, and again find a market for their venal testimony.

Compared with evils such as these, the public benefits to be derived from the exposure of the few frauds which may have eluded the vigilance of the Court or officers of the Government would be insignificant.

It has not been thought necessary to enter into a detailed examination of the cases cited from the English and American reports which determine when and under what circumstances equity will relieve against a judgment obtained by fraud. The question before the Court turns upon considerations so peculiar to itself that adjudged cases in England bear to it but a faint and remote analogy. None of them involve the question which is deemed the principal one in this case, and the correctness of the decisions in some may be open to doubt or discussion—

"*Nil agit exemplum litem quod lite resolvit.*"

Perhaps the nearest analogy is that afforded in the case of a forged will decided to be genuine by a Probate Court. Even in such a case the Supreme Court, following the English authorities, has held that equity has not jurisdiction to avoid the will or set aside the probate.

Case of Broderick's Will, 21 Wall. 503.

In the ordinary course of proceedings in Probate Courts, the will is often submitted by the executor in the absence of the parties interested to contest its validity, and the time allowed the latter to intervene is necessarily short. But in cases submitted to the Board, in the compulsory litigation which the Act of 1851 required, the opposing party is in Court demanding the investigation of the genuineness of the claim, and consenting in advance to be bound by the decisions of tribunals of its own appointment.

To relieve against a fraud effected by the forgery of a will, as of any other instrument, falls within the ordinary scope of the powers of a Court of Equity. Its jurisdiction is ousted because the law has given to another tribunal exclusive jurisdiction over the subject.

But in the cases at bar the jurisdiction fails, not merely

because Congress has confided to other tribunals exclusive jurisdiction over the subject, but also because this Court would have no power, even if such exclusive jurisdiction had not been vested elsewhere, to decide what are the rights and duties of the United States under the treaty, and to what cases its stipulations apply.

The cases of Johnson *v.* Towsley, (13 Wallace, 91) and Niles *v.* Anderson, (5 How. Miss. R. 366) are much relied on by the counsel for the United States.

On examination, they will be found to have no application to the case at bar.

In Johnson *v.* Towsley, and the succeeding case of Samson *v.* Smiley, it was merely held that when a party is deprived of his right of pre-emption, otherwise perfect, by a mistake of law or fact on the part of the land department, equity will relieve, and if a patent has been issued control it in the hands of the patentee for the benefit of the party rightfully entitled.

In the case of Niles *v.* Anderson, it was held that where a person had fraudulently obtained from certain United States officers certificates to an Indian deed, which were necessary to give it validity, equity would restrain him from prosecuting an ejectment suit founded on the deed against a party in possession holding under a prior equitable deed from the same Indian.

It is obvious that these authorities throw no light upon the question of the conclusiveness of a final decree of confirmation under the Act of 1851, or on that of the jurisdiction of this Court, as a Court of Equity to set aside those decrees, or enjoin against their use.

Where in the course of a proceeding before a Court having jurisdiction of the subject-matter of the controversy, a judgment is set up as an estoppel, and conclusive of the rights of the parties, its effect may be avoided by proving that it was procured by fraud and collusion.

Such was the celebrated case of the Duchess of Kingston, in which it was decided that a judgment obtained by fraud would not stand in the way of prosecution for bigamy—

that the suit in the Ecclesiastical Court was a contrivance merely—a link in the chain of fraud and in truth no judgment—according to the phrase used by Lord Loughborough, "*Fabula non judicium hoc est. In scena non in foro res agitur.*"

But here the jurisdiction of the House of Peers to try the defendant for the crime of which she was accused, was undoubted. The judgment of the Ecclesiastical Court was relied on as judicially establishing that the alleged first marriage had not been contracted. That judgment was disregarded because it had been collusively obtained in a sham suit.

But in these suits there is no subject-matter of which the Court has jurisdiction, in the trial of which the validity of the decrees now assailed is questioned collaterally or incidentally. The very object and prayer of the bills is to obtain a decree declaring the original grants fraudulent and invalid, the lands covered by them to be public lands of the United States, and that the decree of confirmation be annulled and set aside.

In the brief filed by the counsel for the United States, he has disclaimed all right to demand the greater part of the relief prayed for in the bills. But he insists upon the right to a decree enjoining those defendants from availing themselves of the decree of confirmation, and from suing out a patent. He admits that as to innocent parties who may have purchased since the final decrees of confirmations, the decrees will stand, and he suggests that they may even obtain patents for their lands, in their own names or in those of the guilty defendants.

But this change in the form of the relief demanded leaves the force of the objections to it unimpaired. Before the Court can grant it, it must first pass upon the genuineness and validity of the original grants—a subject over which, as has been shown, it has no jurisdiction. In truth, stripped of all disguises, these proceedings are in effect appeals to this Court from the decisions of the special tribunals, or they are bills of review to set aside the decrees for newly discovered evidence, and the allegations of fraud, which are

supposed to give jurisdiction to the Court, only reveal more clearly the true nature of the suits.

It is believed that the foregoing conclusively shows that this Court has no jurisdiction to inquire into the fraud principally relied on, because—

1st. The inquiry would involve a re-examination of the very question, exclusive jurisdiction to decide which has been confided to other and special tribunals.

2d. Because the decisions of those tribunals are declared by law to be conclusive of the rights of the parties.

3d. Because even if no such jurisdiction had been confided to special tribunals, this Court would be without authority under its general equity powers to determine what cases fall within the protecting clause of the treaty, or when and in what mode the political department of the Government should fulfill its treaty stipulations.

But waiving for the moment all considerations arising out of the special circumstances of this case, let us briefly examine the more general position assumed by the counsel of the United States.

It is in effect contended that where a party has been forced to commence a suit to establish the genuineness of a document, and the suit is tried on that issue, his adversary may omit to bring forward proofs of its fraudulent character which are in his own possession, and which by reasonable diligence he might have produced; and afterwards, when judgment has gone against him, may ask a Court of Equity to set aside that judgment and retry the same issue, *not* on the ground of newly discovered evidence which could not by reasonable diligence have been procured, nor on the ground of fraud practiced in the course of the proceedings, but on the allegation that the document adjudged to be genuine was in fact fraudulent, and that he believed in and was misled by the assertion of its genuineness made by his antagonist. And further, that this belief in the assertions of his adversary should excuse him for his laches in not producing proofs of the fraud in his own possession on the

trial of the suit which he has himself compelled his adversary to bring to determine that very issue.

A statement of this position is its own refutation. It is believed that a bill to set aside a final judgment, and to obtain a new trial on such grounds and with such an excuse for laches, would be dismissed by a Court of Equity without hesitation.

On the point whether laches with which a private party would clearly be chargeable can in this case be imputed to the United States, some suggestions will hereafter be offered.

Again: the allegation in the bill chiefly relied on is, that certain title-papers were forged. But the same bill avers that they have been adjudged to be genuine by a Court of competent jurisdiction in a proceeding instituted to try that very question. While that judgment stands, they are, in legal contemplation, genuine. The proceeding on which they were so adjudged was in the nature of a proceeding *in rem* to determine the status of the property as public or private land; and the decree, until set aside, "renders the fact what the Court adjudicates it to be." (2 Smith's Lead. Cas. 498.)

It is true that a decree may be avoided by showing that it was obtained by fraud. But this must be fraud in its concoction, such as corruption of the Court, collusion between the parties, or other circumstances which would establish that what seemed a decree was, in fact, no decree—that it was "*fabula non judicium.*"

It cannot be shown by re-examining on its merits the very question decided by the decree.

To meet this exigency, the draughtsman of the bill has introduced some allegations, apparently intended to make out a case of fraud used in obtaining the decree, or in its concoction, *i. e.*, of collateral fraudulent acts extrinsic to the merits of the cause.

It is alleged that the defendants fraudulently suppressed and concealed from the Board the grants for the Ranchos of San Antonio Pinole, San Pablo Moraga, and Valencia, with

intent to conceal from the Board and the Law Agent of the United States the fact, which their production would have disclosed, that two of them were not granted until subsequently to the pretended Sobrante grant. On this allegation it is to be observed :

1st. That the fact alleged to have been concealed would have been wholly inconclusive if not immaterial. It is well known that in many cases ranchos were established and occupied under permissions to occupy or other provisional titles, and the rights of their owners recognized by the Government in subsequent grants of adjoining lands, long in advance of the issuance of the final title. In some cases, the final title was never asked for, nor obtained. A notable instance of this is found in the case of Alvisu, whose claim was confirmed by the Supreme Court, on the strength of a permission to occupy, and a very ancient possession. (23 How. 318.)

2d. The documents alleged to have been suppressed were then and have ever since remained in the archives. They were, therefore, in the exclusive possession of the United States.

The allegation is thus, in effect, that the defendants *concealed* documents among the public records of the country, and *suppressed* them while in the exclusive possession of their adversary.

3d. The very nature of the defendants' claim, being for a Sobrante resulting from the grants of certain specified ranchos, by inevitable reference, directed the attention of the Board and of the Law Agent to those grants; and rendered necessary an inquiry into the fact of their existence and their extent before the merits of their own claim could be determined.

4th. The records of the Board and of the District Court show that in fact *every one of these grants had been presented to the Board* for confirmation more than two years before the date of the decree in this case, and that all had been confirmed some months previously to that date, except one

which was subsequently confirmed on appeal by the Supreme Court.

But, even if the alleged fraud were undeniably such as would ordinarily vitiate a judgment for fraud in obtaining it, as in cases where the judge is interested or there has been collusion between the parties in a pretended and not a real suit, fraudulent suggestions that the parties to the suit were before the Court contrary to the fact, and the like, the complainant could not in this proceeding obtain the relief prayed for.

It is not enough that fraud in obtaining the decree be proved. The propriety of the decree must still be investigated, (Story's Eq. Pl. Sec. 426) in other words, the validity of the claim. The fact that a fraud in procuring the decree has been committed does not convert the land into public land of the United States, nor does the law punish such practices on the part of the claimant by a forfeiture of his estate. If the land was in fact private land at the acquisition of the country, the United States has not been injured by the fraud, however gross. Before, therefore, the Court can declare the land to be public land, the validity of the claim must be investigated. And that question Congress has conferred upon this Court no power to determine.

If it be said that this Court may set aside the decree, and restore the parties to their former situation, as is the practice of Courts of Equity, (Story's Eq. Pl. *ubi sup.*) the answer is that that is impossible. For the Board which made the decree has ceased to exist, and the Act of Congress confers no power on the District or Supreme Courts to entertain bills of review to set aside their decrees in this class of cases; and, even if this fact were otherwise, it would be conclusive to show that the relief now prayed for must be sought in those Courts and not in this.

It is contended on behalf of the United States that the Statute of Limitations does not run against the Government, and that laches cannot be imputed to it. The bill, however, alleges various facts in apparent excuse or explanation of any laches of which the Government may have been guilty.

Whether these matters, if true, would constitute a valid excuse, and whether their truth is consistent with notorious facts disclosed by the records of the Board and of the District and Supreme Courts and by the judicial history of the country, it is not necessary to inquire.

Nor is it necessary to determine whether the general principle that laches cannot be imputed to the Government applies to cases of this nature.

It may, however, be suggested as worthy of consideration, whether if the Act of 1851 be construed as tacitly reserving to the United States the right to re-examine and reverse in other tribunals the decrees which that act declared should be conclusive, the second proceeding should not be regarded as a part of, or a sequel to, the first, and that in it, as in the first, the United States has consented to be bound by all the rules which control the rights of equal litigants before a Court of Justice.

It may also be suggested whether it is not a fundamental and inherent principle of the Court of Equity, at whose hands relief is now sought, to refuse to interpose in behalf of stale demands, not because they are barred by the Statute of Limitations, nor because laches can be imputed to the complainant, but because, from the lapse of time and the nature of the case, it is probable that justice cannot be done. If this be the true ground of the refusal of equity to interfere in such cases, no distinction can be drawn between suits by the Government and those brought by private persons. The ascertainment of the truth may be as impracticable in the one case as in the other. If this principle be applicable to any case where the Government is a party, it would seem to be so to the case at bar—so far at least as the allegations of the bill are to be proved by oral testimony.

The grant, if genuine, was made in 1841, more than thirty-five years ago, when the country was sparsely inhabited and knowledge of the transactions was necessarily confined to a small number of persons. To establish the genuineness of the grants the claimants would have to de-

pend upon the survival of these witnesses after so long a period—the accuracy of their memories, and their willingness under great temptation to speak the truth.

They would labor under disadvantages nearly as great when called on to meet testimony in support of the allegation that the grant was fabricated in 1851.

But it is unnecessary further to consider this point, for I am of opinion that the objections to the jurisdiction would be insuperable, even if these bills had been filed on the very day on which the decrees of confirmation became final.

It is objected that the Attorney-General has no authority, by virtue of his office, to commence this suit in the name of the United States.

The Court is not unmindful that the decision of the question whether the highest law officer of the Government has exceeded the limits of his official authority involves grave and delicate considerations.

In the view taken of the other questions discussed in this opinion, it is unnecessary to decide it.

But it may be remarked that the institution of these suits seems to commit the United States to a course of proceeding, and to the assertion of supposed rights in a case where it must be admitted that the political power has the exclusive right to determine what shall be the attitude of the Government with regard to the claims, and whether this is an appropriate and expedient mode of asserting its rights and performing its obligations under the treaty.

If all the titles of this State derived from the former Governments were subjected to an indiscriminate attack, like that in the case at bar, diplomatic remonstrance or political complications might result, and the Government might be compelled reluctantly to adopt or formally to disavow proceedings, on the propriety of taking which the political branch of it had never been consulted.

The relation of the Attorney-General to the United States is not wholly dissimilar to the ordinary relation of attorney to client.

That client is in these cases the legislative branch of the

Government, whose exclusive province it is to determine when and how the political obligations assumed by the nation shall be fulfilled.

Until authority is given by that branch of the Government, it may be doubted whether the general authority of the Attorney-General to represent the United States in ordinary litigations is sufficient to enable him to institute suits like those at bar.

It will not be disputed that Congress had the exclusive right to adopt any means it thought fit to ascertain and discharge its treaty obligations, whether by committees of Congress, special commissions, or by invoking the aid of the regular national tribunals.

If, before Congress had taken any action on the subject, the Attorney-General being of opinion that certain alleged titles were fraudulent, or so inchoate and incomplete that the claimants had no right of property which the treaty protected, had instituted ejectment suits in the name of the United States against the parties in possession, might it not be urged that he had no more authority to commence the suits than the Court would have jurisdiction to try them ?

And may not the same objection be urged when, after exhausting the ample powers with which he is invested by the Act of 1851, he commences, without the direction of Congress, an analogous proceeding to attain the same object ?

The force of these objections is not diminished by the consideration that, from the necessities of his position, the Attorney-General is unable personally to examine into the merits of every suit that may be brought, and that he is forced to delegate the authority to use the name of the United States, in form to the District Attorney, but in fact, to special counsel, who, in the cases at bar, has given bonds to pay the expenses of the litigation, and who may smite or spare or threaten any title in this State, at his discretion ; or, assuming him to be actuated by the highest motives, according to the conclusion he may on investigation reach, as to the propriety of the final decree of the Board, the

District, or the Supreme Courts, adjudging the title to be genuine.

If this power should by chance fall into unworthy hands, it might afford the opportunity for enormous abuses.

It is objected that the bill is unsworn.

If, however, the suit is properly brought in the name and by the authority of the United States, verification of the bill is unnecessary.

But it may be observed that if the Attorney-General has thought it his duty to authorize these proceedings, it would have been far more satisfactory to the Court if the allegations of these unsworn bills had been authenticated by his own signature, affixed to them under the sanction of his personal and official character, and not merely by those of the District Attorney, whom he has ordered to bring the suit, and of the special counsel, to whom he has delegated his authority.

An assurance would thus have been afforded of the Attorney-General's belief in the allegations in the bills, and in the existence of rights on the part of the United States which the bills seek to enforce; that the suits are really, and not merely nominally, brought by the United States, to protect its rights, and not merely to promote the interests of private individuals or corporations. An assurance somewhat weakened by the circumstance that the Attorney-General seems to have considered the rights of the United States so doubtful, or its interests so unimportant, that he has directed the District Attorney to commence these suits "on the giving, by the said John B. Howard, security for, or depositing a sufficient sum to defray, all expenses which may be incurred in said legal proceedings." Bonds have accordingly been given by John B. Howard, special counsel for the United States, which contain the recital just quoted.

The lands covered by the grants in these cases are many thousand acres in extent. The bills pray that they may be adjudged to be public lands of the United States. It is not to be supposed that if the Attorney-General were persuaded that so large and valuable a property belonged to the United States, he would have made the assertion of its rights to de-

pend upon the willingness or ability of private individuals to defray the expense of the litigation.

The bill filed in the case of the United States *v.* Throckmorton contains the following extraordinary "notice":

"And the said District Attorney, in behalf of the United States hereby gives notice, that in the event of a decree of this Court that the said grant was false and invalid, and that the said confirmation thereof was obtained by fraud, and that the said grant and confirmation be annulled and set aside, * * * and the said lands *are public lands of the United States*, that the 'United States will in such case waive all her right and claim to that portion of said lands on which the town of New Saucelito is located, and also that portion of said lands on which the town of Old Saucelito is represented as represented on said Exhibit A.'"

"The area and quantity" of these lands is stated not to exceed 640 acres.

To whom this relinquishment of the title of the United States to a large and valuable tract of land is to be made, on what grounds, and by what authority, the bill does not state.

It will surely not be claimed that the Attorney-General or his representative has not only the right, by instituting these proceedings, to cloud every title in this State with the menance of a litigation, but also that he can waive at his discretion the rights of the United States to lands adjudged to be public lands.

The power to donate the property of the nation is elsewhere vested.

The conclusions embodied in the foregoing may be summarized as follows:

The demurrer must be sustained, because—

1st. This Court has no jurisdiction to determine the genuineness and validity of a Mexican land claim, that jurisdiction having been exclusively vested in other and special tribunals.

2d. The final decrees of those tribunals are declared by law to be conclusive, not merely as concluding the litigation, but conclusive of the rights of the parties.

3d. Even if no such exclusive authority had been con-

ferred on the special tribunals, this Court would have no jurisdiction to determine how the political department of the Government shall fulfill its treaty stipulations, or to what cases those stipulations apply; and especially in cases where the grants are inchoate.

4th. A Court of Equity cannot interfere to set aside a judgment for fraud in procuring it, when the fraud alleged is the presentation, to the Court in which judgment was obtained, of false documents, and the sole or principal issue tried by that Court was upon the genuineness of the documents so presented.

5th. The allegations of fraudulent concealment and suppression, which might, if the allegations were true, be deemed to constitute "fraud in procuring the decree," are shown by the bill itself, and the nature of the documents alleged to have been concealed, to be destitute of foundation in fact.

6th. That even if the bill showed that the decree had been procured by fraud of the grossest character, this Court would still be without jurisdiction; for it has no authority to pass upon the propriety of the decree, *i. e.*, to decide upon the validity of the claim, nor to remand the parties to any other forum where that question may be determined.

HOFFMAN, District Judge.

OPINION

OF

JUDGE SAWYER.

IN THE CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF CALIFORNIA.

UNITED STATES v. BENJAMIN FLINT ET AL.
UNITED STATES v. SAM'L R. THROCKMORTON ET AL.
UNITED STATES v. HORACE W. CARPENTIER ET AL.

JUDGE SAWYER delivered the following concurring opinion:

While the Courts of California, State and National, are not unaccustomed to deal with cases of great magnitude, I deem it not too much to say, that no question has ever been presented in this State so far-reaching in its consequences as that involved in these cases, if the bills filed can be maintained. It is a startling proposition to those who hold patents to lands issued upon confirmed Spanish or Mexican grants, that after twenty-five years of compulsory litigation, *intended*, in the language of the various acts of Congress, to "*settle* titles to land in the State of California," the holders of all such patents are liable to be called upon to *relitigate* their claims with the Government in the ordinary Courts of justice; and that the patent, instead of being conclusive evidence of a "*settlement*" of the title—the *end of litigation*—is but the foundation for the beginning of a new contest to *unsettle* it, in the tribunals of the country which before had no jurisdiction whatever over the subject-matter. The very institution of these suits, in the name and by the authority of the Government, was well calculated to produce, and undoubtedly did

produce, a general distrust of such titles, and a wide-spread, if not a well-founded, alarm.

If this Court has jurisdiction of the subject-matter as now presented, and the bills filed, present proper cases for its exercise, we are undoubtedly bound to entertain them, and adjudicate the matters at issue according to their real merits, as they may finally be made to appear. But I am fully persuaded that these cases are not of a kind to justify the assumption of a doubtful power, or the sustaining of bills which present but doubtful, as well as stale, equities.

Profoundly appreciating the importance of the principles involved in this discussion, and the grave responsibility resting upon the Court in their adjudication, I have carefully considered the elaborate arguments of counsel, both oral and printed, and examined the numerous authorities cited, not merely with an earnest hope of reaching a correct solution of the questions presented, but with a desire and a purpose to present my own views in a separate opinion. I regret to say, however, that since the argument I have been constantly pressed by other official duties, which, together with the time necessarily consumed in a thorough examination of the questions argued, have thus far prevented the accomplishment of that purpose. But upon a full consideration of the opinions of the Presiding Justice and the District Judge, I find that they have so thoroughly and so satisfactorily discussed the questions submitted, that I cannot hope to add anything to the force of their reasoning. I therefore, with less regret, without further delaying the decision, content myself with expressing my entire concurrence in the conclusions reached; in the grounds upon which the decision is rested, and in the line of argument by which they are so conclusively maintained.

It is apparent to my mind that it is impossible to maintain these bills without going behind the patents and decrees of confirmation and re-examining the questions as to the genuineness of the grants—the very question the determination of which was *exclusively* committed to another tribunal, and which that tribunal, in a proceeding wherein the genuineness of the grants was the controlling question directly in issue, examined

and adjudicated. To maintain that this Court can re-examine that precise question, is to maintain the proposition that a Court may have *exclusive* jurisdiction of a matter over which another tribunal has *concurrent* jurisdiction—a proposition as impossible in law, as that, in physics, two bodies can occupy the same space at the same time.

But, conceding the jurisdiction, the matter is *res adjudicata* under the ordinary rules of law. The difficulty cannot be avoided by saying that the subject-matter now involved is *fraud*, and fraud vitiates all proceedings; for the fraud relied on, when we come to the substance of the cases presented, consists in presenting and maintaining fraudulent grants, without disclosing the falsity of the claim to the adverse party; but that is the very fraud before in issue, litigated and determined, and not a fraud practiced upon the Court in the course of the litigation, by which a real litigation was prevented, as distinguished from the fraud which was itself the subject-matter of the litigation. If these bills can be maintained, it would be impossible to present a case, wherein a question of fraud constitutes the real question in issue litigated between real parties before the Court, and determined, to which the wholesome doctrine of *res adjudicata* would apply. Under such a rule, every case in which a false claim has been presented, and the question of genuineness litigated and adjudged, would be open to re-examination on the pretense of fraud, and there would be no end to litigation. If the principle maintained by the claimants can be extended to these cases, the doctrine of *res adjudicata* might as well be abolished.

SAWYER, Circuit Judge.

Sept. 4, 1876.

J. M. Coghlan, U. S. Attorney; J. B. Howard, and J. B. Felton, for Complainants.

Wm. Matthews, T B. Bishop, J. J. Williams, H. P. Irving, E. R. Carpentier, Volney E. Howard, and Edmond L. Goold, for Defendants.

EXPLOITS

OF THE

ATTORNEY-GENERAL

IN

CALIFORNIA.

BY AN

EARLY CALIFORNIAN.

NEW-YORK:

PRINTED FOR THE AUTHOR.

1860.

EXPLOITS

OF THE

ATTORNEY-GENERAL

IN

CALIFORNIA.

BY AN

EARLY CALIFORNIAN.

NEW-YORK:
PRINTED FOR THE AUTHOR
1860.

0966

TO THE

HON. J. S. BLACK,

Attorney-General, United States.

Sir: Happening to see a "New-York Herald," of the 3d June last, I found in it a dashing letter from you to the President, giving an account of your legal exploits in the distant State of California, together with the manner in which you had disbursed certain appropriations, to the amount of $102,000, placed at your disposal by Congress, for the especial purpose of resisting fraudulent claims to land.

Having been a resident of California for eleven or twelve years past, it is somewhat singular that, as one of the public, I had not heard more of your enormous efforts and successes on the spot. In common with others, I had been for years deploring the apparent inefficiency and woful procrastination of your department. It appears by your report, that, so far from having neglected the public interests, you have been, beyond comparison, the most vigorous, industrious, and successful champion of the rights of the people, and of the government, of all who have previously worn your official robes.

Your remarkable letter shows that you have ex-

pended nearly the whole of the appropriation of $102,000 given you for fighting fraudulent land claims. I find that you employed E. M. Stanton, Esq., with a fee of $25,000, and several thousand dollars "expenses;" Edmund Randolph, Esq., $5,000, and paid James Buchanan, jr., Esq., and Lieut. Harrison, a considerable compensation and expense disbursements.

In order to persuade the President and Congress that this fund has been well employed, your letter expatiates upon the enormous value of the lands claimed under fraudulent grants, in California, which you state to be ONE HUNDRED AND FIFTY MILLIONS OF DOLLARS. This slap-dash amount has been paraded with excellent effect through Eastern newspapers, and has, doubtless, been believed by some upon your testimony. But is it true? The total claims—genuine, fraudulent, duplicates, and triplicates—presented in California, aggregated about twelve and a half millions of acres. Of these one third, as to area, were overlapping or duplicate claims, or were of so vague a character, as to have been either abandoned in, or hopelessly rejected *by*, the Land Commissioner's Court —leaving about eight and a half millions of acres as the quantity of land claimed in all California, under all sorts of grants, genuine or fraudulent, with which you could have anything to do. Of these, from two thirds to three fourths, in area, were lands which were in the actual possession of the claimants, and had been so before the conquest, leaving about two and a half millions of acres as the quantity which could be claimed under fraudulent or contested grants. The State of California contains 100,000,000 of acres: at

most, therefore, the one fortieth of its area was fraudulently claimed. Now, the total assessment roll of real and *personal* property in the State, in 1859, was $132,000,000. If the whole State—land, buildings, wharves, canals, crops, cattle, merchandise, machinery, steamboats, money, etc.—is estimated at $132,000,000, by persons employed for the purpose, on the spot, your estimate of $150,000,000 for *the one fortieth part of the naked soil alone*, must be a *slight mistake*, to say the least. As *you* estimate, the whole State must be worth $6,000,000,000.

In the same slap-dash manner, you state, after giving a long list of claims, "that the value of any one of the defeated claims exceeds the whole appropriation, and some among them exceed it one hundred, or perhaps one thousand fold." The appropriation was $100,000, consequently some of the claims defeated were worth, *say ten to one hundred millions of dollars each!* The mines of New Almaden in the same wild manner you set down as worth "$15,000,000," out of which "$8,000,000" worth of quicksilver has been taken.

The rescue of the fortieth part of the State from land forgers, *had you accomplished it*, would have been an achievement, to glorify which, exaggeration and bombastic assertion would have been needless. I merely note these items as specimens of the reckless want of precision which pervades your letter. Such a dashing mode of writing, though it may attract the eye of a news-reader, damages that quality which, above all others, a state paper should possess —truth. You state in your report, as an axiom, "that the law is not one of the exact sciences." Your

practice, so far as making statements goes, evidences your belief in it.

Among the objects that you claim to have achieved by the employment of Messrs. Stanton, Randolph, James Buchanan, Jr., &c., and the disbursement of this fund, is the collection of the State archives of California from their hiding-places—Los Angeles, Monterey, Benecia, and where not—and the arrangement, classification, and binding of them into four hundred volumes—by the aid of which you are now *able to detect and defeat fraudulent claims, or verify and admit to patent, without further opposition, those which are genuine.* I desire to add my feeble tribute of applause, because a plain duty has at length been done, after twelve or thirteen years of neglect—an applause which could have been warmer, if out of the especial fund you have disbursed, some portion could have gone to the gentlemen (not agents of yours) who really did this work, and who remain unpaid.

I regret to temper your exulting peace with the sober sound of truth, but this portion of your effort admits a more sombre view than your letter presents.

In 1848, by the treaty of Guadalupe Hidalgo, the United States acquired California—the country and its archives. By the stipulations of that treaty, every existing right and title in California was placed under the care of the conqueror—he obligated himself sacredly to protect them. The history of all private titles, with few exceptions, were in those archives. The expedientes, copies, and references, were there, always accessible to the people. The first task of the conqueror—had he been thoughtful and merciful—

when he undertook to ascertain and settle private land claims in order to segregate his own public land from that of private claimants, should have been to collect, collate, and thoroughly examine those archives. He elected, on the contrary, to deny ALL titles in the country (by the act of 1851), and demanded proof of every possessor. Even then, for the purpose of aiding them, or simplifying his own task, he ought to have collected the archives, so that they and he could have had the light of the authoritative information they contained. Nothing of the kind was done. The archives, nailed up in boxes in Benecia, or scattered through the State, were inaccessible alike to claimants and the law agent of government. For years—for six years—from 1851 to 1857, the persecuted California farmers and land-owners were left to prove, as best they might, and from such imperfect materials as they could command, their titles to their ranches. Without their archives, with their own copies of papers probably lost, before a strange tribunal, under an entirely novel procedure, conducted in a language unknown to them, they have been compelled to fritter away those precious years in the wearing agony of alternate hope and despair, knowing little except the reiterated demand, pay, pay, pay.

From the criminal carelessness of the government sprang the swarm of land-forgers. The judges of the land commission were men, and, sympathizing with the unfortunate claimants, were liberal in their admissions of proof, and allowed almost any scrap of paper muniment to be entitled to a favorable judgment. The forgers seeing this, having no fear of na-

tional records to detect and overthrow their felonies, sprang their land-traps, manufactured pretended paper grants, and presented them with confident assurance. These pretended grantees were persons who were not, and never had *been in possession of the lands they claimed.*

There were no archives. When these pretensions alarmed the government, the archives were at length collected; and NINE YEARS after the establishment of the land commission you can officially say, "that, guided by these lights, I am enabled, with almost absolute certainty, to decide upon the truth or falsehood of any claim—to dismiss appeals when justice requires, and to assert the fraudulent character of other cases with confidence."

It had been a happy thing for California if nine years ago that sentence could have been truthfully written, and had been honestly acted upon. It had spared that smothered execration of American tyranny which has been perpetually on the hearts and on the lips of the trodden-down Californian—the more bitter because it is impotent. It had preserved fortunes now irretrievably broken by wearying litigation, brought on by the government, and lives consumed under the yoke of such an arbitrary and remorseless injustice. The past cannot be recalled, but it is well, when a government officer covers his department with glory, because a public duty has been done, which enables him to defeat fraud, that he should be reminded that the neglect of that duty, for the protection of the innocent and for good government, had been for years previous a scandal—a burning shame—a positive cruel and inhuman want of common justice.

There have been few things more painful to contemplate than the unhappy position of the old Californians, since the law of Congress of 1851, to settle land claims, brought their titles before a land commission for adjudication. They were an illy educated but contented pastoral people. Their tenures were simple. Their title papers were carelessly drawn and more carelessly preserved, because a plethora of land created security and indifference. Suddenly, under the rule of a conqueror, under strange laws, rendered in a strange language, *every title* in the country is pronounced presumptively fraudulent, and is arraigned before a public tribunal. They, whose fathers had been born in the homesteads now occupied by them, whose lands and herds had descended to them, and whose possession was hereditary, were compelled to exhibit and prove their paper titles—the very existence of which they had probably forgotten. Suddenly, also, with this despotic ordinance, arose two classes of the strangers who assailed them—the one with offers of assistance to "get their titles through the courts," demanding from them the tythe to the half of the land for the service—the other a swarm of lawless marauders who took forcible possession of their fields, alleging that their titles were not ascertained, were questioned by the government, that their land *might* be public soil, in which case they could rightfully occupy it, and *would*, until the question was adjudicated. From this forcible occupancy, there was no law to protect the unfortunate rancheholder. The State courts, in the absence of the United States patent, declined to recognize his rights. While the federal government deraigned his titles, and

the legal fraternity extorted huge concessions for his defence, the coarse crowd of squatters drove his herds from his pastures, threatening him with death if he set his foot upon his own soil, and the *State* clamored at his door for taxation, which, if he failed to pay, would subject his lands to a legal sale under execution. The land, for his occupancy or his profit, *was not his*—but, for the purposes of taxation *it was his.* He might not go upon it, might not cultivate it, or reap profit from it, but the power which denied him protection compelled him to pay its share of taxes. This terrible condition was all but universal; the heel of the conqueror was upon every old hearth-stone, his hand smote the conquered everywhere, surrendering them to rapine always, often to utter ruin. Take a single instance. An accomplished lawyer (now practising in New-York), was, in 1853, offered a mortgage over a Mexican ranche of eleven leagues, situated in Marin County, California, given to secure the sum of $10,000, *with interest at* 10 *per cent. per month, compounding monthly.* He inquired what such a mortgage was given for. It was for money advanced to pay taxes upon the ranche for the two preceding and for the current years, and to pay lawyer's fees for defending the owner's title before the United States land commission. The ranche was covered with squatters, and the luckless Californian could neither feed his cattle nor grow his crops upon it; he could not sell it, for none would purchase with a questioned title, and adverse possession; he could not borrow on it, for in the eyes of the money-lenders he had nothing to offer, neither title nor occupancy. The title was ultimately confirmed, found perfectly genuine, and I believe, be-

fore this, the long delayed patent has been issued, but the mortgage has swallowed up the property, and the miserable owner, after being slowly tortured for years, finds his title acknowledged, but himself landless and destitute. Cases similar in results are the common experience of the old Californians. The quick confiscations of the Norman conquerors among the English Saxons were less disastrous than have been the legal, piecemeal robberies under the American rule in California.

You favor the President and the public with a long list of claims which you assert to be fraudulent, the defeat of which is due to the commission you sent out, and the funds you disbursed. At least such is the direct and unmistakable meaning of the letter.

Of this long list of names, I am personally acquainted with four, viz.: The Limantour, the Santillan, and the Sherreback claims to lands in San Francisco, and that of the owners of the New-Almaden quicksilver mines to their mining land. The three first I know from the painful experience of six years of resistance to their pretensions, as they *each* claimed my homestead and property.

As regards the Santillan and Sherreback claims, your agents, your commission, and your fund, did less than nothing—worse than nothing; they merely sang a lullaby over private vigilance, and left the claims absolutely unopposed. Your Messrs. E. M. Stanton, James Buchanan, Jr., and L. Harrison, whatever else they did, neither put pen to paper nor tongue to argument, against these bold frauds to lands covered by hundreds of homesteads, almost in the heart of a great city. The Santillan claim, powerfully pushed by

Philadelphia capitalists (its owners), was feebly opposed by the overworked local law agent and district attorney. It was confirmed by the land commission, and the district judge, on appeal, gave judgment in its favor. Then private citizens bestirred themselves to unmask it. By their efforts the final confirmation of the claim by the United States Supreme Court was rendered impossible, for the grantee himself (Santillan) was hunted up in Mexico, and *his deposition taken that he never received such a grant during the Mexican rule.* Private citizens retained and paid counsel before the Supreme Court at Washington. The Court rejected the claim with every mark of contempt, and you slip in and hold up the dead fraud as a proof of the good *your* commission and *your* disbursement did. We did the work and paid the bills. You claim the honors and rewards.

The Sherreback claim, also for property in San Francisco, worth an immense sum, based upon documentary testimony of the most trumpery and improbable character, was contested by the government before the land commission in the most negligent and slipshod manner, and was rejected only upon its own insufficiency by that court. It was confirmed nevertheless on appeal to Judge Hoffman, by default, so to speak. That learned Judge delayed his decision for months, in the hope that the proper government officer would offer some testimony, or some argument, in opposition to a claim notoriously fraudulent, and at last, in despair, rendered a judgment of confirmation based upon the papers as presented by the claimants—*no one appearing on behalf of the government or people.* This is a matter belonging to the business of

the years of 1859, 1860. The citizens again formed an association (of which the writer is chairman), and commenced to do, that which the government undertook to do, but utterly neglected, viz.: to collect evidence to disprove the claim and affidavits to obtain a rehearing, which we have only within six weeks succeeded in doing—we employed our own counsel, there being neither your commissioners, your friend, nor even district attorney, in San Francisco, to protect the public interest. This claim is paraded as a trophy of your great vigilance and success. Its present position is an unmitigated disgrace to the legal arm of the government.

Toward the final defeat of the great Limantour fraud, your commission did assist, after an association of private citizens, at an expense of upward of twenty thousand dollars, had for four years been actively opposing the claim. To these citizens is due that search in the archives in Mexico which effectively demonstrated its fraud—a search which was conducted, be it remembered, in Mexico, by Senor Bruilla, Mexican minister of foreign affairs, and laid the foundation of our long resistance. It was these citizens who, in a great measure, discovered when, where, and by whom, the forged title papers of Limantour were fabricated, and originated that investigation into the forged seals, which, in effect, annihilated that unblushing fraud. After they had been fighting the claim for years, the agent of your department, Mr. E. N. Stanton, arrived in San Francisco in time to witness its overthrow, and give the flourishing *coup de grace* which you now expatiate upon.

You notice the case of the New Almaden mine,

classing it with the fraudulent claims, in the following complimentary manner:

"The New Almaden quicksilver mines, estimated to be worth over $15,000,000, are in possession of a company composed of Mexicans and Englishmen. The claimants were removing and appropriating to themselves the wealth of the mine at the rate of $1,000,000 a year, and had already appropriated $8,000,000, as shown by their books. Instructions were given to the district attorney and Mr. Stanton to take proceedings to restrain this waste, until the validity of the title should be decided, and they were authorized to employ assistant counsel. Under these instructions, Edmund Randolph, Esq., of San Francisco, was employed to assist them, and a bill in chancery was filed against the company, on which an injunction was granted which remains in force. *There is no doubt but that all the title papers in this case are fraudulent and fabricated.*"

It was against this claim your agents levelled almost all their energies, and upon which a great part of the fund was expended. Mr. E. M. Stanton, as your agent, received some $30,000 in all. Mr. Edmund Randolph, employed by you, received $5,000. Even the "National," a newspaper in your patronage, received some $2,000 to $3,000, which explains why it spent its breath, day after day, in calumniating and vituperating the owners of New Almaden—branding them as forgers, robbers, swindlers, and, worst of all, aliens.

The impression left on a stranger's mind by reading your strange notice is, that the claimants had dishonestly possessed themselves of a mine, which was discovered and opened by the government, together with all its works and furnaces, erected at the public expense. The fact is, they found a naked waste, in exactly the same way that tens of thousands of miners

have done, and still do, in California, and went to mining upon it, "removing and appropriating to themselves the wealth of the mine." What buncombe language is this to apply to California miners? What are all the people of that State doing now? Exactly that very thing; neither more nor less. What have these men more than other miners done, that leaving all others in the State you thus turn upon them the whole force of your official power. The only reply that can truthfully be made is this: that before the conquest of California, while it belonged to Mexico, they discovered, among some waste mountains, a mine; at that time worked it, and subsequently expended immense sums upon it. It turned out to be rich, and of course *somebody* wanted to get it away from them. These *somebodies* were Messrs. Eldridge, Laurencel, Hon. Robert J. Walker (*then* a friend of yours), John A. Collier, and others who shall be nameless.

This is the reason of your action. Your friends, and Mr. Stanton's private employers, want this mine —not the public—and, therefore, this suit is brought, and the costs defrayed out of your fund. Messrs. Eldridge and Laurencel had retained as their counsel your friends and agents, Mr. E. M. Stanton and Mr. Edmund Randolph, with what contingent interest it is impossible to say. These gentlemen, who were also retained by the United States to prosecute the fraudulent land claims, professed to discover fraud in the titles of the owners of Almaden—which titles were, with all other California titles, before the United States court, in process of being adjudicated upon—and instructed by you, at the expense of the government, but at the instance and for the use of the afore-

said *somebodies*, obtained an injunction at the suit of the United States to restrain them from mining.

Messrs. Stanton and Randolph could allow the Santillan and Sherreback frauds to assail hundreds of homesteads and harass thousands of families unopposed—it would have been profitless to oppose them—but the miners of New Almaden, who were on no man's land, interfered with none, and had a full property of their own creation to lose, were game of a paying kind.

Nothing in the history of state persecutions, except under despotisms, so utterly perplexes impartial lookers-on, who have watched this case, as the extraordinary conduct of your department toward the workers of this mine. The animus displayed even in your letter, not only in plain words, but by classifying their claim with, and among, a great number of naked, proven frauds and forgeries, of the most iniquitous description, and appending to your equal and sweeping denunciations of all, the authority of your official name, in a document which will be read by the whole country is, to say the very least, undignified and unfair—coarsely unfair towards those gentlemen.

Is it decent—commonly decent even—for the highest legal officer of the government in a state paper, to pronounce upon a title under which the claimants have been in *possession* fifteen years, of which thirteen years may be considered undisputed—and which is under a general law now being litigated in due course before the federal courts, that "*there is no doubt but all the title papers in this case are fraudulent and fabricated.*" "No doubt!" "All the title papers!" You pronounce judgment on a question yet to come before

the courts, without hesitancy—with emphatic certainty; and in the face of the fact that the land commissioners, from whose decisions you are appealing, have pronounced those papers genuine and sufficient, and confirmed the title to the mine.

The more elevated the position of a man, the less can he afford reckless statements. The country surely does not expect of its chief law adviser the slashing assertions of a hireling county court pettifogger. The national dignity, as well as its law, ought to find utterance in your opinions. Had you desired to be just, you would have modified your expression, and added this fact, well known to you, but probably not to those whom you address: that the claim of the owners of New Almaden, should it eventually prove invalid, differs from all the long list of land frauds you have named in this, that POSSESSION, the great evidence of true ownership, DID NOT accompany those pretended grants, but has, in its most perfect and complete form, accompanied the claim of the New Almaden miners. Not one of the claimants under forgeries made subsequent to the conquest—Limantour, Santillan, Sherreback, Luco, Iturbide, and others—ever occupied, or pretended to have occupied, constructively or really, the lands they claimed. In nearly every case their claims were not even heard of until after the discovery of gold and the influx of population had rendered the lands valuable, and very generally not until they were largely improved by actual purchasers and occupants, to whom confirmation of the frauds, in addition to being a public wrong, would have been a robbery of everything they possessed. But the New

Almaden claimants have held the lands claimed by them in actual, resident, working, mining possession, from before the conquest of California, without interruption, until now. If their title be fraudulent, it differs from all the other frauds in this vital particular—it is a claim to property *which they, and they alone, have possessed, occupied, and improved, since it was a primeval wilderness.* This would have been impartial truth, well known to all Californians, and of which the public here are ignorant, and which, in the estimation of disinterested readers on this side, would give an entirely different complexion of the case, from the coarse and slanderous aspect in which you have presented it.

A brief statement of the case of that mine, which any person may substantiate by an examination of the voluminous testimony, now before the United States Courts in California, shows :

That, in 1845, when California was a province of Mexico, one Andres Castillero, a Mexican officer, travelling in the country, was shown by some residents a deposit of cinnabar, on a spur of the Sierra Azul, a coast range of mountains near San José. Being a tolerable metallurgist, he recognized it as the ore of quicksilver, and taking the persons who showed it to him into partnership, they *denounced* the mine, according to the forms of the Mexican mining law, before the nearest judicial officer, who, going out to the mine with them, in company with numbers of the neighboring rancheros, gave them possession of it. Castillero and his associates commenced working it, and did work it in a rude way, the whole of 1845–'46. (See "*Lieut. Revere's Tour of Duty in California,*"

in 1846, and "*Bryant's What I Saw in California*," 1847–'48.) Denouncement and possession were the only modes of acquiring title to mines under the Spanish-Mexican laws. By this method, ALL the mining rights in Mexico are obtained and retained. The initial step in the Almaden title is historical. The early books on California record the facts, and great numbers of unimpeachable living witnesses attest it.

In 1846, Commodore Sloat hoisted the American flag in Monterey, and took possession of California by conquest. In his published address to the inhabitants, he promised them that "every private right should be inviolably respected;" and subsequent proclamations by federal authority announced that "all persons in *possession of lands* under color of title, should have their possessions guaranteed to them." Castillero & Co., amongst others, were entitled to and became beneficiares under this first American law, for they were in possession of the Almaden mines by the only "color of title" which could be had to a mine. *Their title to the mine* has since been confirmed by the Land Commissioners, and the case now stands on your appeal in the U. S. District Court.

In early spring, 1846, Castillero proceeded to the City of Mexico, to claim the standing national reward offered to discoverers of quicksilver. He obtained a concession of $5,000 in money, and a quantity of quicksilver flasks. (Report of the Secretary of State to the Mexican Congress, 1846.) *He also obtained a grant of two leagues of the land around his mine.* This *grant of land* was rejected by the Land Commissioners as invalid;—not on any doubt of its au-

thenticity, but for want of seasonable judicial survey and segregation. And yet you say, "There is no doubt that all the title papers in this case are fraudulent and fabricated."

Mexican affairs being then disarranged by the conquering armies of the United States, Castillero could not obtain the $5,000 or the quicksilver flasks, and, not having capital, negotiated with the wealthy English house of Barron, Forbes & Co., of Mexico and Tepic, to work the mine on shares. In 1847, Mr. Forbes, then seventy years old, proceeded to California, and personally superintended the enlarged working. He found it in charge of one James A. Forbes, a resident in California, who represented some of the partners in Castillero & Co. From 1847 to 1851–'52, before any net returns had been obtained from the mines, the house of Barron, Forbes & Co. invested in their development, and in machinery, furnaces, etc., the large sum of $700,000. The mine *happened*, in the luck of mining, to turn out rich, and yielded from 1852 to 1858 a net profit of from $300,000 to $400,000 per annum, when its further working was enjoined, at your instance, with the aid of Messrs. Randolph and Stanton. For nearly two years this mine, which employed several hundred men, and distributed some $400,000 per annum of disbursements in its county, has been lying idle.

With that spirit of exaggeration and unfairness which has characterized the whole of your report, you state the value of this mine to be $15,000,000; and that its proprietors "had appropriated $8,000,000" of quicksilver while they had been working it. The intention is to give the impression that the owners

have gained $8,000,000 of profit by its working. I believe the eight millions of quicksilver said to be appropriated is equally exaggerated with the $15,000,000 of value, which is, at least, six times as much as any sane man would offer for the mine, with an indisputable title. If, from the gross proceeds of any mine you deduct the outlay necessary to obtain those proceeds, you reduce the amount immensely. Californians know scores of instances in which mine-owners have "appropriated" hundreds of thousands of dollars of the public gold, and yet at the end of the appropriation have been bankrupt. I have not the actual statistics touching the Almaden cost and yield of mining (which are well known in California), but estimates have been published there and not gainsaid, showing that if the owners of Almaden had taken their original cash investment in that mine, and had lent it out on bond and mortgage in California, instead of sinking it in the mine at the time they did, they would have a larger yearly income, and now a principal exceeding the value of their mining estate, notwithstanding the mine has happened to turn out a decided success.

As soon as the mine, under the impulse of the largest mining investment in California, and its energetic management, became productive, a set of clamorous tricksters laid plans to obtain it. A neighboring ranchero, named Berreyesa, brought suit for it on the ground that it was within his boundaries, and was defeated. Near the mine was another ranch, of a square league, originally granted to one Justo Larios, who sold to Grove Cook, from whom the *minerals*, or some of them in it, passed to Mr. ex-Secretary

R. J. Walker, and the land to Charles Fossatt, the present claimant, or to Eldridge and Laurencel, the possessors under Fossatt. It is sought to stretch this league, commonly called the Fossatt claim, over Almaden, and a decision of the United States District Court (Judge Hoffman) has been obtained, extending it so as to embrace that mine. This claim elsewhere you have stated to be indisputable as to title, though disputed as to boundary. Its extension is resisted by the owners of Almaden.

The real contest as to the ownership of Almaden lies between the present possessors, under Castillero & Co., who found, opened, and have always worked, the mine, and the owners under the Fossatt claim. One of these latter (Mr. Eldridge) has mortgaged the Fossatt claim, "including," as he states, "the mines of Almaden" (of which he is not, and probably never will be in possession), to John A. Collier, of Binghamton, N. Y., to secure one million of dollars, bonds under which mortgage are somewhat familiar to moneyed and influential men around New-York and Washington.

At this juncture (some two years ago) the United States suddenly intervened in the fight, and asked for an injunction to restrain the working of the mine pending the controversy as to title, which controversy was, in effect, as you are aware, between the owners of Almaden and the owners of the adjoining Fossatt claim.

The United States pleaded its paramount title as owner in fee of the soil, and asserted its right to possession of the mine. The court decided that "the United States had exhibited such a title to the mine

as entitled it to an injunction to stay waste during the pendency of the litigation," and that "mining was a waste of the substance of the estate." The injunction issued.

The state of California was equally perplexed and astonished. Why the United States should interfere between the two private contestants, and further the quarrel of one against the other, was mysterious. Why the United States should assert its sovereign title to mining lands against actual occupants and workers, in this single case, while it left hundreds of thousands of miners throughout California in undisturbed possession, is equally mysterious. The lands of New Almaden were mining lands exclusively—worthless for any other purpose. They were either *public* or *private* lands. If *private* lands, what had the government to do with them? If *public*, did the government wish to restrain mining on public lands? If so the whole business of California, which consisted of mining on public land, must cease. If government, at its option, could pitch upon any one mine or any one man, and enjoin it or him, under plea of its paramount title, who is safe? Who durst offend the attorney-general? Who durst vote against the government which held such a terrific option over the miners? Or was this Almaden mine (supposing it to be on public land, which was the only ostensible ground for government interference) restrained at your instance because some of its proprietors were Mexican and British, or because they had found and worked it before the United States acquired California; or was it because a large sum had been invested in working it, and it had been successful and yielded amply? In

this case foreign investments, ancient and prescriptive rights and success, are crimes against the sovereignty of America, demanding the forfeiture of the criminals' estates, and the sequestration of the fruits of their industry.

The title of the owners of Almaden was triple. First: They had the common right and title of the California miner, under and by which all the vast mining properties in California, Oregon, and Utah (with trivial exceptions), are held, viz.: *discovery*, *occupancy*, and *working*. With us, if a man discover, occupy, and work a mine on public land, IT IS HIS, no matter if it ruin him in "appropriating" its minerals, or convert him into a millionaire in a week. This fundamental popular right has, since the acquisition of California, been the magna charta of mining—the corner and top stone of our national prosperity, the destruction of which would bring chaos. During thirteen years a large population has added hundreds of millions to the national wealth under its protection, and the government has recognized it by its silent consent during that period, with the sole exception of the case of these miners of New Almaden.

Supposing the lands to be public, then whatever of right or title any miner in California, Oregon, or Utah, had, or now has, to work any mine on public land, the owners of Almaden had, and now have, with this difference—their rights,were, and are, the oldest in the country. Discovery, occupation, and working, with them commenced in 1845, and have continued until you stopped their mine.

Second: They had the right which denouncement and possession under the Spanish and Mexican law

gave them—which right was recognized and confirmed to them after a thorough investigation and argument before the United States Board of Land Commission; which gives them the right to mine, under the American government, by the law of nations, and the provisions of the treaty by which the United States acquired California, and which would, under Mexican law, and should, under an administration of equitable rights arising therefrom by American law, secure to them the working and possession of their mine, *even if it were in the private lands of Berreyesa or Fossatt.*

Thirdly: They have the grant of land from the Mexican government, for two leagues round their mine. This (prejudging an untried suit), you assert is a fraud. If it were ten times a fraud, it would furnish no reason for interrupting their mining, which they prosecute by rights independent wholly of their two-league grant, which they could prosecute, so far as the United States are concerned, if they had never presented the two-league grant at all. If the two-league grant be proved a fraud, then what? The land claimed becomes land of the United States, or land of Berreyesa, or of Fossatt. If the latter, then the United States have nothing to do with the mines clearly; and if the former, will the government restrain mining upon it in the case of these men, while permitting the entire population of California, citizen and alien—Caucasian, Mongolian, and African—to mine on public land, without stint, limit, or interference?

But the owners of Almaden assert that the Mexican documents they present are *wholly* and *entirely*

genuine. They may not be perfect, they may not amount to a title—but they are what they purport to be, and none other—documents made in Mexico at the dates they bear, and by the officials whose names are appended to them. The facts occurred in Mexico. The title is a Mexican title. It must be substantiated or controverted in Mexico, or by evidence from Mexico. The owners of Almaden have wearied the courts and the government to send to Mexico to take testimony and search the archives. They applied to the United States court in San Francisco for a commission; the court refused it for want of power. They applied to Congress for a law authorizing such a commission; *at your direct request*, the Judiciary Committee of the Senate reported against such a measure. They petitioned the President, to ask of Mexico copies, under the great seal, of these documents and of the archives; *by your advice the request was refused.* They applied to the attorney-general and President, asking *them* to select a commission satisfactory to them, and send to Mexico (whose expenses these owners would bear), which was also refused. Finally, they summoned their witnesses in the city of Mexico before Mr. Black, the United States consul, having notified the attorney-general to send a deputy, and by authority of a general statute of the United States (passed 1856), they proceeded to call evidence for use in the United States court in California. *The consul, in violation of the statute, refused to take the testimony*, and produced a letter from the Hon. Robert McLane, United States minister, instructing him so to refuse. These instructions were traced through the Hon. Lewis Cass to *yourself.*

Your object was to close the mine. This you accomplished by unsworn and unproved allegations of fraud in a title not necessary to these mining possessions. Having accomplished this object, you refuse, carefully and with the utmost vigilance, to permit them to bring before the United States court evidence rebutting your allegations. In the meantime you are with difficulty restrained by the counsel for the owners of Almaden from dismissing the appeal from the decree of the United States District court, which confirms to the Fossatt claimants their title by boundaries, including Almaden. You say, in effect, "I know that this land is not public land—that the United States will never get it—but still I assert the title of the government for the purpose of sustaining the injunction" Doubtless, were the Fossatt claim sustained by the Supreme Court, with Judge Hoffman's boundaries, you would discover that the United States no longer desired to enjoin the mine. If, by a legal trick, it be found that Mr. Robert J. Walker and Messrs. Eldridge Laurencel, John A. Collier, and certain influential parties round Washington, own these mines, which they did not discover, open, or work, whose costly improvements are ready made, though not by them—then the attorney-general will candidly acknowledge that the United States no longer need to enjoin their working. Unfriendly persons will probably say that you have merely acted as "next friend" to the Fossatt claimants through all this extraordinary course of action, and that your public zeal has been harmonious with their private advantage.

The names of the counsel employed by you on

behalf of the United States, in the suit which closed Almaden on the ground that it was public land, the property of the government, discloses the fact that your action has been taken for the benefit of the Fossatt claimants to Almaden solely. E. M. Stanton was the counsel of those claimants in Washington, and Edmund Randolph was and is their standing counsel in California. They were retained by those claimants to obtain from the United States its patent for that rancho. They claimed Almaden for their private clients, and the District Court approved that claim. The very same gentlemen are employed by you and paid by the public money, to sue out an injunction at the cost and in the name of the United States, restraining the owners of Almaden from working because the *mine belonged to the public, to the government*—the very counsel who the day before and the day after pleaded that it belonged to Fossatt, and sustained their plea on the judgment of the District Court; all of which is well known to you.

The government of the United States has always been the champion of the actual occupant and improver of the wild lands against the merely paper claimant. Its policy has been to protect the possession of the early adventurer, who, with his life and fortune in his hand, penetrates its frontier wilds, and establishes in their solitudes the active and useful industries of civilized life. To the pioneer, the improver, the worker, to those that first risk and first settle, the genius of our government, peculiarly extends its protecting and helping hand. If they are successful, as some are, or magnificently remunerated, as are very few, they are, theoretically at least, still

its favorites and wards. Such early pioneers and improvers are the owners of Almaden. All the massive and extensive improvements of their mine they have made. They found it a barren peak, covered with deer paths and bears' tracks, claimed by no human being, and they have made it what it is to-day. Is it the will of the American people—foreigners though some of these miners are—that the fruits of their daring enterprise and steady industry shall be forfeited in the name of the government which fifteen years ago promised them, by the solemn proclamation of the head of its forces in California, "*that all persons holding lands under color of right, shall have their possessions guaranteed to them?*"

If you succeed in ousting them and placing the Fossatt claimants in their place, what do you accomplish? This: You take from the worker, the builder, the improver, the actual miner, his possession, and bestow it upon those who have not placed there one stone upon another, who neither discovered the minerals, nor have opened the approaches to them, and who claim them by a merely legal, forced, unnatural interpretation of the boundaries of an adjoining Spanish grant. Is this a worthy achievement, to the accomplishment of which the first law officer of a powerful confederacy strains his greatest efforts, puts in motion the whole machinery and chicanery of his office, and concentrates the force of his government?

The state of California, through its legislature, answers in the negative. That legislature has remonstrated against your action.

In the meantime it is to be hoped that the owners of New Almaden will resist the efforts of interested

parties, who, professing to control your action and opposition, tempt them with proposals of compromise. Their honor has been assailed, their characters aspersed. It is to be hoped that they will gain of right all which is justly theirs, or yield the whole to the strange combination of private intrigue and official power, which seeks to rob them of their early, noble, and now matured enterprise.

The spirit and genius of American policy, as well as natural justice, protest against the gross robbery which, in the name of the American people, you are attempting. It matters not how much the Fossatt claimants may have succeeded in interesting your friend, Mr. E. M. Stanton, and other influential persons connected with the government, the public sense of right, the love of fair play, will—*must*, in the end, confound this deep laid scheme of plunder, which has been, if not born, yet nursed into strength under the shadow of your official power.

I am, sir, your obedient servant,

An Early Californian.

New-York, *August* 10*th*, 1860.

C 33

9

To the Committee on Public Lands of the Senate of the United States.

IN THE MATTER OF THE

Rancho Corte de Madera del Presidio

In Marin County, California.

The Statement of Peter Gardner in Reference to the Survey of the Rancho Corte de Madera del Presidio, in Marin County, California.

Also, Petition of Settlers.

J. W. DENVER,
A. ST. C. DENVER,
Attorneys.

In the Matter of the Rancho Corte de Madera del Presidio, in Marin County, California.

The Statement of Peter Gardner in Reference to the Survey of the Rancho Corte de Madera del Presidio, in Marin County, California.

To the Committee on Public Lands of the Senate of the United States:

The parties in interest, who are represented by Peter Gardner herein, are Ebenezer Warmouth, Lewis Denos, Francisco Angounet, James Commins, heirs of Michael Dowd, heirs of Murt Tierney, heirs of Peter Dolan, Peter Gardner, R. S. Brown, C. E. Christianson, Jonathan Bickerstaff, Wm. Richardson, T. M. Dulip, settlers claiming 160 acres each in township 1 south, range 5 west, the public school-house and lot in same township; and Israel Kershaw, 160 acres in township 1 south, range 6 west.

The parties above named solemnly protest against the recent action of the Interior Department in this, that the grant was originally for one square league of land, which, in our measurement of land, is equal to four thousand four hundred and thirty-eight and sixty-eight one-hundredths acres, (4,438.68;) that the proper Mexican authorities measured the land, segregating it from the public domain, and gave the grantee, Juan Read, juridical possession of just one square league; that the land of which Read was placed in possession was not for descriptive out-boundaries, for the grant never had out-boundaries, but by actual measurement of the land, passed over on horseback, thus excluding, necessarily, all the marsh and overflowed lands; that the decision of the United States Land Commissioners and the final decree of the United States District Court confirmed the grant for just the same quantity of land; that the late ruling of the Department of the Interior if carried into effect will give the heirs of Juan Read and their conditional assignee, Valentine, *seven thousand eight hundred and sixty-three and sixty-eight one-hundredths acres, (7,863.68,)* or *three thousand four hundred and twenty-five acres, (3,425,)* more than the quantity granted and confirmed by the decree of the court, being nearly donble the quantity of land granted and confirmed. These facts are shown by the unofficial plat, purporting to have been made by Ransom and Allardt, in November and December, 1873, and June, 1874, recommended by H. C. Rollins, United States surveyor-general for California, on the 28th day of April, 1877. The boundaries designated on this unofficial plat are those which the Department of the Interior propose to establish as the boundaries of the grant.

Your petitioners assert that this plat was never an official survey, either made in the field or presented as such; that the official plat of survey compiled by Ransom and Allardt and approved by James T. Stratton, United States surveyor-general, contained 6,033 acres, and did not include the salt marsh and tide lands which it was well known then belonged to the State of California, and which the State had had surveyed, sold, and patented to the purchasers. These marsh lands were covered by the tides and contained about one thousand eight hundred and thirty acres

(1,830) according to the surveys made by the State of California, and these surveys made by the State were taken by United States Surveyor-General Rollins and added to the survey made by Ransom and Allardt, but this survey was never actually made by any United States surveyor in the field, as the law requires all surveys should be made.

The first and only survey ever actually made in the field by a United States surveyor was made by R. C. Matthewson, United States deputy surveyor, in October, 1858, and approved by J. W. Mandeville, United States surveyor-general for California, on September 19, 1859. This survey contained four thousand four hundred and sixty and twenty-four one-hundredths acres, (4,460.24,) and was duly advertised, as required by law under the act of June 14, 1860, and no objections were filed thereto by any-one hereinbefore the surveyor-general.

On September 13, 1860, the survey was ordered into court by the District Court for the Northern District of California, and on December 22, 1860, the grant claimants filed in that court exceptions to the survey. These objections did not pretend to make any claim for the marsh and overflowed lands. No action was taken by the court until September 28, 1865, when the court overruled the objection and approved the Matthewson survey, but on the 24th day of October following the court set aside and annulled this decree, and dismissed all proceedings upon the sole grounds that it was entered under a misapprehension. This action of the court left the case where it was in 1860, approved and published by the surveyor-general with no objections to it filed against the survey, and by the terms of the 5th section of the act of June 14, 1860, the survey became final and not open to review, because said section provides that where the survey has been published and no application shall be made to the court ordering it into court, or when said order has been refused, or if granted and the court shall approve the survey and location, or shall reform or modify the same, the surveyor-general shall, without delay, transmit the survey and plat to the General Land Office, and a patent for the land as surveyed shall forthwith be issued therefor, and the said plat and survey so finally determined by publication, order, or decree, as the case may be, shall have the same effect and validity in law as if a patent for the land so surveyed had been issued by the United States.

When the district court dismissed all proceedings before it, the survey was left just where it was in December, 1860, approved by the surveyor-general, and final by the publication. It was then the duty of the surveyor-general to forward the plat and survey to the General Land Office, and the duty of the Commissioner to issue a patent for the land as surveyed. There was nothing required of or authorized to be done by the Commissioner except the simple ministerial act of issuing the patent.

But instead of forwarding the plat and survey, the United States surveyor-general for California (Upson) republished the survey in 1868, assuming that right under the act of July 1, 1864. Objections to the survey were filed after this second publication, and in due time the plat and survey were forwarded to the General Land Office, and on May 6, 1871, Commissioner Drummond approved the Matthewson survey and plat. But on appeal to the Secretary, (Delano,) he, on January 6, 1872, rejected it, and ordered a new survey should "be made conforming to the juridical possession."

On February 5, 1872, Commissioner Drummond transmitted the order of the Secretary to the surveyor-general, and also instructed the surveyor-general how the lines of the new survey should be made, by starting from a point named as the beginning in the act of juridical measurement by

the Mexican authorities, and running thence north to the Arroyo Holon, and thence to course 24 of the Matthewson survey, and thence to course 105 of said survey. He forwarded with these instructions a diagram with dotted blue lines, representing the eastern boundary of the grant according to his instructions.

These lines excluded all of the marsh and tide lands, Point Taburon, and Peninsular Island, and another island, which are Government reservations.

The surveyor-general instructed Deputy Surveyor Ransom to make the new survey. In September and October, 1873, Ransom made a plat of the lands claimed by the grant owners. He made no survey, but merely made a plat from other surveys and State surveys, including all of Point Taburon, but excluding the marsh and tide lands. Before final completion Ransom died, and in June, 1874, Deputy Surveyor Allardt was instructed to run the west line alone, which he did, and this was the only line surveyed in the field for the Ransom-Allardt plat.

This plat and purported survey was published by Surveyor-General Stratton in February and March, 1875, under the act of July 1, 1864, and was approved by him.

This plat embraced 6,033 acres, and it was forwarded to the General Land Office by Surveyor-General Rollins, who succeeded Stratton as surveyor-general. Rollins also transmitted with the papers an unofficial plat, and stated in his letter of transmission that, in his opinion, this unofficial plat, filed as an exhibit by the assignees of the grant owners, should have been published by Stratton instead of the one said Stratton had approved.

When the case came up for examination before Commissioner Williamson, of the General Land Office, he, on September 28, 1878, made a decision ignoring all former decisions, treated the case as an original proceeding, and ordered the Ransom-Allardt plat approved by Surveyor-General Stratton to be amended by substituting the lines set out in the unofficial plat filed as an exhibit, so that the survey should embrace all the marsh and tide lands and adjacent islands, the Government reservations of Peninsular and adjacent islands, and about 1,300 acres of public lands, so that the survey should embrace 7,863.68 instead of only the one league granted and confirmed.

Upon the application of the Secretary of War the case was referred to the Attorney-General for his opinion, and on July 19, 1879, he gave an elaborate opinion covering the entire case, and designated where the lines should be run to carry out the decision of Secretary Delano. These were substantially the same as those designated by Commissioner Drummond in his letter of February 5, 1872.

An appeal was taken from the decision of Commissioner Williamson, and on December 31, 1879, Secretary Schurz made a decision reversing the decision of the Commissioner, and held that the decision of Secretary Delano was final and not open to review; that all the power the Department possessed was to enforce that decision; that no survey had been made in conformity with law, and he ordered that one should be made in conformity with the lines fixed by Delano's decision, which lines he set out in his decision.

The parties claiming as owners by assignment then appealed to Congress, by a bill presented to the Senate, (No. 1571, Forty-sixth Congress, Second Session,) on April 1, 1880, and on January 19, 1881, the Committee on Private Land Claims made report (No. 767, Forty-sixth Congress, Third Session) adverse to the bill, and stating the committee were of opinion that the Matthewson survey was correct.

The attorney for the confirmees, six days after this report was made, to wit, on January 25, 1881, filed a written application with the Secretary insisting upon the issuance of a patent to the confirmees upon the Matthewson survey.

On March 7, 1881, Secretary Schurz declined to hear this application, because he would retire from office in a few days.

This carried the application before Secretary Kirkwood, who, on April 14, 1882, granted the hearing of arguments upon the case, but he made no formal decision while in office.

The case then was brought before Secretary Teller, who, on July 23, 1882, decided that the decision of Secretary Delano was final; that Secretary Schurz's decisions should be set aside and annulled, and he then ordered that the survey should embrace all the lands included by Commissioner Williamson's decision except the Government reservations. On January 31, 1883, he amended his former decision by giving the grant claimants and their assignees the Government reservations also, thus giving them all the marsh and tide lands belonging to the State of California of about 1,830 acres, the Government reservation of about 360 acres, and public lands of about 1,300 acres, all in excess of the quantity granted. This would give the grant claimants or their assignees about 3,425 acres more than was granted or confirmed, and to which they have no just right.

The proceedings in this case were begun under the provisions of the act of March 3, 1851, and the Matthewson survey was made and approved by Surveyor-General Mandeville, on September 19, 1859, and published under the act of June 14, 1860. The objections to said survey being set aside and dismissed by the court, leaves the matter as though no objections were ever made; and by the terms of the act of June 14, 1860, these acts made the survey final, and the only authority the Department possessed was the the simple ministerial act of issuing the patent as required by the 5th section of said act. The same section gave the confirmees a title to the lands embraced in the survey, "the same in effect and validity in law as if a patent for the land so surveyed had been issued by the United States." Acting upon this right, the Read heirs took actual possession of the land included in the Matthewson survey only, and divided it among themselves, thus accepting the action of the surveyor-general and district court as final, and the Hon. Montgomery Blair, counsel for the heirs, again informed the Secretary of the Interior, on January 25, 1881, that "the heirs of Juan Read agree to accept a patent based on the survey of the Rancho Corte de Madera del Presidio, made by Matthewson in 1858, in satisfaction of that grant."

The Read heirs had had their league of land set apart to them by the Matthewson survey, and they had accepted it, taken possession of the lands embraced therein, and divided it among themselves. This survey did not include any of the lands claimed by settlers represented herein by Peter Gardner.

This should have been the end of all proceedings, for the heirs held and were in possession of all they were entitled to under the grant, and were begging for a patent for that particular land, and nothing more.

But here is where other parties, who were mere speculators, came into the proceedings.

One James Clinton Bolton, on August 12, 1865, entered into an agreement with the Read heirs by which he undertook to obtain a patent for more land than was included in the survey of Matthewson, although that survey contained a little more than one league of land and fully satisfied

the grant. Bolton agreed to give his professional services and to pay all the expenses that his undertaktng might require, and his compensation was to be one-half of all the land that might be obtained under color of the grant to Read which was " not included in the survey of said rancho, which was made under instructions from the United States surveyor-general for the State of California by R. C. Matthewson, deputy surveyor, in October, 1858, and approved by J. W. Mandeville, United States surveyor-general for California, September 19, 1859, said approved survey containing four thousand four hundred and sixty and twenty-four one-hundredths (4,460.24) acres of land, the said rancho being the same which was granted to Juan Read by the Mexican Government." (See Bolton's contract with the heirs.)

This shows on its face a deliberate attempt to do a wrong, a conspiracy to rob somebody, for the grant was for only one square league, the Matthewson survey contained a little more than one square league, and the Read heirs were satisfied with it, and they excepted that survey from the meddling of Bolton, in their agreement with him.

After a time Bolton sold his interest in the matter to various persons, but eventually it all, or nearly all, got into the hands of Thomas B. Valentine, who has been pressing the case before the Interior Department, not for one square league of land, but for the half of whatever can be obtained outside of the Matthewson survey.

The proceedings that followed the dismissal of the case by the district court, as heretofore stated, are curious. A new surveyor-general had been appointed, and by some means he was induced to publish the Matthewson survey a second time, although it had already been fully disposed of under the act of June 14, 1860, as heretofore stated. The pretext for this was that the act of July 1, 1864, required it. Under this second publication Valentine and others filed objections to the survey, asserting that the location was not properly made, but they did not even then claim any of the marsh and overflowed lands, but merely claimed that the location should have been more to the north.

After the decision of Secretary Delano, in 1872, another partial survey and plat was made by Ransom and Allardt, which included the lands claimed by the settlers on what were deemed public lands, now protesting, but this did not include the marsh and overflowed lands. This was approved by Surveyor-General Stratton. But he was succeeded by Surveyor-General Rollins, who volunteered an opinion on the case, disapproving of the survey approved by his predecessor, and giving his unauthorized opinion that the Read heirs and Valentine should be given all the lands within the Matthewson survey, and all those shown in the unofficial plat made by Ransom and Allardt as an exhibit, in addition. The maps or plats he sent up to the General Land Office were not official plats or maps actually made in the field by any United States surveyor.

The volunteered opinion of Rollins was taken up by Commissioner Williamson and approved by him as official, but on appeal to Secretary Schurz it was rejected, he declaring that the decision of Secretary Delano was final, and then deciding where the lines should be fixed, and marking them on a map or plat, so as to conform to Delano's decision, and give the confirmees the quantity of one square league, leaving out the marsh and overflowed lands belonging to the State of California, the Government reservations, and the lands on Point Taburon, which last was included in the Matthewson survey, and was a part of what had been taken by the Read heirs and partitioned among them as before related.

Here was another final decision of the case by the head of the Department, and under the long-established rules of the Department the case was *res adjudicata* without the production of new evidence which would have caused the former Secretary to have made a different decision. But no new evidence was produced, and by the rules of the Department, all authority to act upon the case ceased with Secretary Schurz except the simple act of carrying out his decision.

This case was disposed of finally by the district court in 1865, dismissing all proceedings, and leaving the survey approved by the surveyor-general and published by him under the act of 1860.

It was again decided finally by Secretary Delano in 1872, and by the rules of the Department his decision was not open to review by his successors.

It was decided the third time by Secretary Schurz on December 31, 1879, who adhered to that of Secretary Delano, because, as he declared, it was final and not open to revision, and again, on May 3, 1880, on an application for review, he affirmed his former decision.

And then, more than ten years after the decision of Secretary Delano had been made, and nearly three years after Secretary Schurz had decided that Delano's decision was final and the case was *res adjudicata* so far as the Department was concerned, the present Secretary of the Interior, without the production of any new evidence, has assumed to act upon the case, and entirely ignors the former action of the Department. The claims of the settlers with their testimony are thrown aside as unworthy of notice, the opinion of the Attorney-General and of the Senate committee are entirely ignored, and the volunteer opinion of a surveyor-general, who had no authority to meddle with the case, is adopted by the present Secretary in all its parts, whereby wealthy schemers are made to triumph over the poor and honest settlers.

These settlers have never had their day in court, or an opportunity to be heard. They did not object to the Matthewson survey, because it did not affect them, and, therefore, they had no right to object to it. But to the subsequent proceedings, in which it was proposed to include their lands, they did file objections and arguments, but all their objections and the testimony they adduced were ruled out and cast aside because they had not objected to the first or Matthewson survey. This was rank injustice.

The Read heirs have, for more than twenty years, been in the undisturbed possession of the Matthewson survey of four thousand four hundred and sixty and twenty-four one-hundredths acres of land, (4,460.24,) or twenty-two (22) acres more than one square league, and this ruling of the present Secretary proposes now to disturb the settlers on the public lands, the reservations of the United States, and the rights of the State of California, and give the Read heirs and their assignees, under color of the grant, 3,425 acres more than they were ever entitled to.

One singular phase among the proceedings in this case is that while the Read heirs, through their attorney, has been appealing to the Department for a patent upon the Matthewson survey for 4,460.24 acres only, the Department has refused it, and insist they shall have a patent for not only what they asked, but for 3,425 acres more than that, of public and private land, or nearly double what they claimed or were entitled to.

By the treaty of Guadaloupe Hidalgo the United States were obliged to protect the people in all the rights they had obtained from Mexico to lands granted within the ceded territory, and this protection could be given only through the political power of the Government. Accordingly Congress

passed the act of March 3, 1851, by which the Board of Land Commissioners and the courts were directed to pass upon the validity of the grants for land in California, and, after such action by the courts, the surveyor-general alone was entrusted with the survey and location.

The act of June 14, 1860, changed this in so far as to give the district court power to supervise the action of the surveyor-general in certain cases by ordering the survey into court.

In the case at bar, the Corte de Madera del Presidio Rancho, the court did order the survey into court, and approved it for one square league, and by the subsequent order of the court dismissing all proceedings, the survey and location were made final by the publication under the act of of 1860 and the approval of the surveyor-general.

Congress alone has the power to make all needful rules and regulations for the disposal of the public lands of the United States. In no act of Congress can any thing be found by which the Secretary of the Interior or any other officer has authority to give to the Read heirs three thousand four hundred and twenty-five (3,425) acres of land over and above the one square league granted and confirmed to them, nor is there any act of Congress by which the Secretary of the Interior or any one else is authorized to take lands belonging to the State of California by virtue of her State sovereignty and the act of September 28, 1850, and give them to the Read heirs. A plain proposition to do such a thing would seem to be an absurdity, and yet that is precisely what the ruling of the Secretary proposes to do in this case.

Congress having the right to dispose of the public domain at pleasure, and not having made any law by which the Read heirs could have any legal right whatever to take more under the grant than one square league, and that having been set apart to them by the Matthewson survey, of which they accepted and now have the title, occupation, and possession by virtue of the act of 1860, the petitioners herein represented by Peter Gardner as aforesaid pray that Congress may pass such an act as will enable them to enter at the proper land office the lands on which they had settled under the pre-emption laws of the United States outside of the Matthewson survey, and that the patent to the Read heirs be limited by the boundaries set forth in the Matthewson survey as approved by the surveyor-general of California or for such other and further relief as equity and good conscience should entitle them to.

J. W. DENVER,
A. ST. C. DENVER,
Attorneys.

WASHINGTON, D. C., *April 13, 1883.*

To the Honorable Committee on Public Lands of the United States Senate.

The undersigned who were settlers on lands in Marin County, in the State of California, which were outside of the United States official surveyed lines of the Rancho "Corte de Madera del Presidio," made by R. C. Matthewson, United States deputy surveyor, in October, 1858, and approved by J. W. Mandeville, United States surveyor-general for California, September 19, 1859, most respectfully present the following statement of facts and what they deem to be their rights:

This survey contains one square league, the same amount of land that was granted to Juan Read by the Mexican authorities in 1834, and which was confirmed to his heirs by the United States district court on January 14, 1856.

Said survey was advertised under the act of June 14, 1860, in the months of August and September, 1860, said location being the one selected by the heirs of said grantee, and as late as the 25th of January, 1881, made application to the honorable Secretary of the Interior for a patent on said survey in full satisfaction of their grant, which has been denied them by the Department.

After the official lines of the grant were thus located and surveyed by the surveyor, the undersigned and others settled upon and improved various tracts of land outside of the lines of the official survey, placing valuable improvements thereon; that the cost and value of the improvements made by the various settlers on these outside lands situated in townships in range 6 west were about as follows:

Ebenezer Warmouth	$1,000
Lewis Denos	1,500
Francisco Angounet	1,600
James Commins	2,500
Michael Dowd	1,500
Murt Tierney	1,500
J. L. Van Ranegan	4,000
Peter Dolan	1,600
Peter Gardner	2,000
R. S. Brown	1,800
C. E. Christianson	1,000
Jonathan Bickerstaff	4,000
William Richardson	1,500
H. M. Dulip	8,000
Public School House	1,000

And in addition to the above, Israel Kershaw placed some $15,000 to $20,000 worth of improvements on land outside of the officially surveyed lines in township 1 south, range 5 west.

That these settlements were made in good faith with the full knowledge and consent of the heirs of Juan Read, the owners of the grant, who, up to that time and for several years after, always proclaimed these outside lands to be public lands of the United States, and as late as May 28, 1863, John J. Read, one of the heirs, made an affidavit, which is on file in the Land Department, declaring these to be public lands.

That no person or persons ever asserted or claimed any adverse interest to these settlers, or pretended that these lands belonged to the grant until after one James C. Bolton made a contract with the owners of the grant in the year 1865, whereby he agreed with them to try to have these outside lands included

in the survey, but not to affect the survey so as to leave out any part of the original Matthewson survey as that being reserved by their selection. A copy of said contract is on file in the Land Department.

The surveyor-general published the said Matthewson survey in August and September, 1860, under the provisions of the act of June 14, 1860.

On September 13, 1860, upon application of the heirs of Read the United States district court ordered the plat and survey into court; that on the 22d day of December, in pursuance of said order, the surveyor-general returned said survey into court. No action was taken by the court until September 28, 1865, when the court entered a decree approving and confirming the survey and declaring it final. But on October 16, 1865, on motion of the counsel for the Read heirs, the court set aside the decree and dismissed all proceedings touching said survey.

This action was believed by the settlers to be a final settlement of the case, for the reason that the heirs had made that their selection, and the survey had been published under the act of 1860 and approved by the surveyor-general, and that by the provision of the 5th section of said act the survey became final and was not properly open to review thereafter by the Department, thus leaving and declaring the lands settled on by the undersigned as public lands subject to pre-emption and homestead entry.

No objection or complaint had been made against the right of the settlers until after the proceedings in the court, in 1865, by one James C. Bolton, claiming to have purchased from the Read heirs the lands outside of the Matthewson survey, upon which he instituted proceedings in the United States circuit court against the settlers, and subsequently the court decided against the settlers, holding that all the lands claimed within the exterior outboundaries of a grant, regardless of quantity, could legally be held in possession, and the right of possession to the entire quantity maintained by the grant owners or assigns up to the date of the issuance of a patent upon the survey notwithstanding the heirs had made that their selection and the settlers had been in the undisputed possession thereof for many years.

Upon these proceedings the settlers were, in 1870, ousted from the possession of their lands and improvements, compelled to pay Bolton about $1,700 for rents, and to pay all the costs of court, amounting to a very large sum.

After this the case came before the Interior Department in various shapes, and among others the Read heirs, through their attorney, appealed to the Secretary to issue them a patent for the Matthewson survey. This was refused, but the Secretary has ordered a new survey to be made so as to include not only all the lands in the Matthewson survey, but all the outside lands claimed by the settlers, lands reserved by the Government for military purposes, and large tracts of salt marsh and overflowed lands belonging to the State of California,

The costs and expenses growing out of these proceedings forced on the settlers, and which they had to pay, amounted in the aggregate to more than $30,000.

The settlers think that the second publication of the Matthewson survey, under the act of July 1, 1864, was unauthorized by law, because the survey became final by the publication of 1860, and the only object of the second publication was to re-open the case and prolong the matter in the Department until the ejectment suit was disposed of by Bolton. The question on the act of 1860 was fully considered by the Attorney-General of the United States in his opinion to the Secretary of the Interior, September 30, 1867. (See 12th Opinion, p. 251.) This opinion was given after the passage of the act of July 1, 1864, and if the law is as he defines it, the survey in this case became final in September, 1860.

In view of the facts that the Read heirs did not claim the outside lands when the survey was made in 1858, nor do they now claim them, and that the settlers settled on these outside lands and improved them in good faith, and have been put to great expense in defending what they believed were their legal rights, they respectfully request that in case your investigation shall sustain our statements you will report a bill directing the Secretary of the Interior to issue a patent to the Read heirs as the owners of the Rancho "Corte de Madera del Presidio" upon the lines of the survey approved by Surveyor-General Mandeville on September 19, 1859, and affirmed by Commissioner Drummond May 6,

1871, in full satisfaction of said grant, and further, that you provide by law that the original settlers or their legal representatives shall be granted a preferred right to enter the outside lands upon which they had settled and occupied previous to said ouster as a matter of equity and justice.

PETER GARDNER,
ISRAEL KERSHAW,
JAMES COMMINS,
R. S. BROWN,
LEWIS DENOS,
WILLIAM RICHARDSON,
EBENEZER WARMOUTH,
JOHNATHAN BICKERSTAFF,
FRANCISCO ANGOUNET,
C. E. CHRISTIANSON,
H. M. DULIP,
WILLIAM TIERNEY,
Son of Murt Tierney, on behalf of myself and two sisters,
JOHN DOWD,
Son of Michael Dow, deceased,
On behalf of myself, two brothers, and one sister,
JAMES DOLAN,
Son of Peter Dolan, deceased,
On behalf of myself and three sisters.

MARCH 20, 1883.

336.794

REMARKS

OF

MR. GWIN, OF CALIFORNIA,

IN THE SENATE OF THE UNITED STATES, APRIL 19 AND 20, 1852,

ON

The Deficiency Appropriation Bill, and on the Bill introduced by him in relation to Private Land Claims in California.

The Senate, as in Committee of the Whole, resumed the consideration of the bill to supply deficiencies in the appropriations for the service of the fiscal year ending the 30th of June, 1852.

Mr. GWIN said: Mr. President, it was not my purpose to make any remarks in reference to this bill, except to explain some of the amendments which have been offered by the committee on Finance. But the discussion which took place on Friday last has made it a duty on my part to present some facts to the Senate, which I shall do as briefly as possible. Although I dissent from the chairman of the Finance Committee in some of the positions assumed by him in opening this discussion, I should, nevertheless, have remained silent, but for a remark which fell from the Senator from Georgia, [Mr. BERRIEN.] That Senator stated that he was struck with the peculiarity of this discussion, with which we have been favored, from the chairman of the Finance Committee, on the subject of deficiency bills. And he went on to state that he was not now prepared for the discussion; but he added:

"I note it merely for the purpose of having it understood by the country, that this Administration is capable of a defense, when the proper moment arrives for making it."

Now, here is a notice given to us, that the Senator intends to defend this Administration at the proper time; and, in order that he may have additional materials to those that were furnished by the Senator from Virginia, [Mr. HUNTER,] I will give him some other items which will demand explanation from the champions of the Administration. I shall commence by calling the attention of the Senator to this provision of the Constitution of the United States:

"No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office."

I will then ask him to refer to a letter from the Secretary of State, which he will find in the documents accompanying the President's message, on California and New Mexico, addressed to the Hon. Thomas Butler King, who was, at the time, a member of Congress elect from the district, I believe, in which the Senator resides. The Secretary of State says:

"The President, reposing full confidence in your integrity, ability, and prudence, has appointed you an agent for the purpose of conveying important instructions and dispatches to our naval and military commanders in California."

At the close of this letter he says:

"Your compensation shall be at the rate of eight dollars *per diem*, from the time of your departure on the business of your mission, until your return home; and you will be allowed your traveling and other expenses during your absence."

Mr. DAWSON. What is the date of that letter?

Mr. GWIN. It is dated April 3d, 1849. Mr. King was at that time a member of Congress from Georgia. He had been elected, I believe, the previous October. His term had commenced; and here he receives one of the most important appointments, as I shall presently show, ever conferred upon any individual, from the beginning of the Government to the present time, still retaining his seat in Congress, and receiving compensation at the rate of eight dollars a day, and his traveling expenses, in addition to what he might receive as a member of Congress. Now, what was Mr. King's mission? He had placed under his control the whole power of this Government on the Pacific coast, or that portion of it included within the Territory of California. He had placed at his disposal the army, navy, and Treasury of the United States. I have the documents to prove what I state. I read from a letter from General Smith, who was in chief command in California, addressed to the Secretary of War. He says:

"SIR: I have the honor to acknowledge the receipt of your communication, by the hands of the Hon. T. Butler King.

"With the view of affording him every possible opportunity of acquiring information relative to California, its present situation, its capabilities and prospects, I have prepared the means of making a journey over the most part of the Territory that is inhabited—going from the upper part of the Sacramento along the foot of the Sierra Nevada to the upper waters of the San Joaquin, and returning by a route

nearer the coast, after visiting the country north of this bay, near the sea. Several officers of the staff will accompany us; and an experieneed geologist, Dr. Tyson, of Maryland, has promised to go along. Commodore Jones will also be of the party, if he finds he can be spared from the court. We shall leave as soon as the steamer is dispatched."

Now, this expedition is one of the items that has within a few years swelled the expenditures in the quartermaster's department to such an extraordinary amount. It was fitted out by the quartermaster at great expense, and Mr. King was escorted by the general and commodore in command of the army and navy on the Pacific coast into the interior of California, accompanied by an armed escort. The authority by which Mr. King controlled these movements, emanated from the President of the United States. There was no discretion left to the military commanders in California. I will show now what Mr. King did as to the navy. He delivered his instructions to Commodore Jones, in command on that station, who writes a letter to the Secretary of the Navy as follows:

"SIR: I have the honor to acknowledge the receipt of your letter of the 7th of April, handed to me on the 5th instant by Lieutenant Ringgold of the Navy, in company with the Hon. T. Butler King. A more acceptable visitor than Mr. King could hardly have been sent to California; nor could his arrival here have been more opportune, being himself the bearer of the first authentic intelligence of the failure of all efforts in Congress to extend the laws of the United States over this Territory. Mr. King will doubtless report by the first steamer the state and condition of affairs here as he found them. It is very gratifying to that portion of the army and navy serving on this station, to find that the measures they have adopted for the security of persons and property, and for the collection of duties on foreign imports, are approved by Mr. King, as we hope they will be by the President."

To show what unlimited power was conferred on Mr. King, I will read a letter addressed by him to Commodore Jones, dated

SAN FRANCISCO, *August* 13, 1849.

SIR: In carrying into effect the views and policy indicated in the letter of the Secretary of the Navy, which I had the honor to deliver to you on my arrival in this place, it has become necessary that I request you to dispatch the steamer Edith, as soon as practicable, to St. Diego, touching at the intermediate ports, and to return to Monterey by the 1st proximo. Please to have her supplied with stores, &c., to accommodate some twenty persons in her cabin. As she is now, I am informed, undergoing repairs, I must beg that you will not hesitate to employ such force as will insure her being ready for sea, if possible, by Saturday next.

I have the honor to be, with very great respect and esteem, your most obedient servant,

T. BUTLER KING.

Commodore T. AP C. JONES, *&c., &c., &c.*

Commodore Jones, on the first of September, notifies the Secretary of the Navy of this order:

"SIR: The steam propellers Edith and Massachusetts have been transferred from the War to the Navy Department—the former to the squadron and the latter to the joint commission. The Edith was in a very unserviceable condition—that is, her propelling machinery, which has been repaired at a very considerable cost, ($3,500;) and she is now in charge of Lieutenant McCormick, with two engineers hired for the occasion, and has gone to leeward upon a requisition of the Hon. T. B. King, to bring the members elect from San Diego, Los Angeles, and Santa Barbara, to Monterey, where the convention for forming a State constitution will this day meet."

On the 12th of September, he writes another dispatch to the Secretary as follows:

FLAG SHIP OHIO, SAN FRANCISCO, *September* 12, 1849.

SIR: The inclosed copy of a letter from Lieutenant James McCormick will inform you of the shipwreck and otal loss of the United States steam-propeller "Edith." My letter (No. 65) of the 1st of September last informed you of the object for which the Edith was dispatched to leeward, which will be better understood by the accompanying copy of a letter from the Hon. T. Butler King, to me addressed. I am pleased to say that, notwithstanding the loss of the "Edith," the object of her visit below has not been defeated, as all the members elected to the convention from the southern districts, with a single exception, were in attendance at Monterey when the convention organized for business on Monday, the 3d instant, and, by last accounts, were proceeding harmoniously in their great work.

I have the honor to be, most respectfully, your obedient servant,

THOS. AP C. JONES,

Commander-in-chief U. S. Naval forces, Pacific ocean.

Hon. WM. B. PRESTON, *Secretary of the Navy.*

It will thus be seen how this vessel was lost, that cost, I believe, $120,000, and thus lost in the exercise of authority conferred on Mr. King, giving him the control of the army and navy of the United States, who originated an expedition that turned out to be wholly useless, as the delegates, with a single exception, had proceeded to the convention independent of it. The vessel could have rendered important service at that particular juncture, in carrying supplies from one part of the country to another. Its total loss makes another large item in the expenditures of the Government, which have been so enormously increased of late.

I will progress a little further. I wish it distinctly understood that I speak on this subject without the slightest intention of reflecting on anybody—certainly not upon Mr. King. What he did he conceived to be in the discharge of his duty to the country. But I intend to hold this Administration responsible for the expenditure of public money that has taken place in California, and which is now creating a prejudice against necessary appropriations for that State; and I intend to show that the expenses heretofore incurred in that State, with the concurrence and sanction of the Administration, have been, in some instances, wholly unnecessary, and a waste of the public money. I will proceed with Mr. King; and I wish to call the particular attention of the honorable Senator from Georgia, who is prepared to defend this Administration, to another fact. Mr. King returned to the United States, and made a report on California.

Mr. BERRIEN. With the permission of the Senator from California, without disclaiming a disposition to defend the Administration when I think proper to do so, I beg to say that the Senator has totally misconceived the declaration which I made the other day. I said that this Administration was capable of a defense, when the proper occasion should arrive. I have not said (as the Senator now says) that I was prepared to make that defense. But I desire to say that there was nothing in the remark which I made the other day that authorized the Senator from California to appeal to me in the manner in which he has done.

Mr. GWIN. I am very sorry that I misunderstood the Senator. I certainly understood him to make a general statement to the Senate, that he was very much surprised at the course of remark pursued by the Senator from Virginia.

Mr. BERRIEN. So I was.

Mr. GWIN. I understood him to say further, that he was not then prepared to go into a defense of the Administration, but that it was capable of defense; and I drew the inference that it was his intention hereafter to make that defense. If the Senator's attention had been turned to what I said in the opening of my remarks, he would have dis-

covered that I stated I would give items to be defended additional to those which the Senator from Virginia had presented to the Senate, for I thought the Administration needed a defense on these subjects. I was merely calling the attention of the Senator from Georgia to these facts, because he had, as I conceived, on the part of the Administration, thrown down the gauntlet, and I was prepared to take it up.

I will proceed very briefly to call the attention of the Senate and of the country to one fact. Mr. King, after his return to the United States, and during the recess of the Senate, was appointed to the important office of collector of customs for the district of San Francisco—the second appointment conferred upon him during the time for which he had been elected a member of the Thirty-first Congress. He proceeded to San Francisco, and, instead of remaining there to discharge the duties of his office, he repaired with dispatch to the seat of Government, and became a candidate for the Senate of the United States. He spent weeks at the seat of Government, keeping "open house," electioneering for the office of Senator, while the duties of the office of collector were left to be performed by persons inexperienced at least, if not incompetent. The incumbent of this high office of the Government, enters the political arena with all the power it conferred—power that he used on that occasion, if I am not misinformed, to promote his election to the Senate; for one of the most important considerations with some who sustained him was, that they expected to get his place in the event of his election to the United States Senate. He carried on that contest during one hundred and forty-two ballots for Senator with a spirit and energy rarely if ever before known in this country. The Legislature adjourned without making an election. Mr. King, holding this high Executive office, went before the people of California as a candidate for the Senate. It was charged—and I have not seen it contradicted by authority—that a large number of individuals were employed in the custom-house who traveled through the State of California, and endeavored in every way they could to carry the election in favor of the present Administration, and especially to secure a Whig majority in the Legislature in favor of the election of Mr. King to the Senate.

We have seen, in the newspapers, some credit given to the Treasury Department, because it had recently greatly retrenched the expenses of the custom-house at San Francisco. I wish to bring to the notice of the Senate, and I wish, Mr. President, the inquiry answered at the proper time, whether or not these expenses had not been increased to an extraordinary extent, to accomplish political objects; and when there was no necessity for these additional forces for these objects, the election being over and the Whigs defeated, then the retrenchment took place; and, to divert public attention from the fact, credit is given to the Administration for this evidence of reform. Under the unlimited power that we have given to the Treasury Department, to exclude California from the operation of the general law, which makes it necessary to report for appropriation the expenditures in collecting the customs, (owing to the great distance of that country from the seat of Government,) I have reason to believe that the expenses of collecting the revenue there has increased to treble what they were under the *de facto* Government, when the price of everything in that country was higher.

There is another fact which, if in order, I wish to bring to the notice of the Senate and the country. That the nomination of Mr. King, which it was known to the Administration would be contested on constitutional grounds, was withheld from the Senate, so that we could not act upon it, until after the 4th day of March, when the time for which he had been elected a member of the Thirty-first Congress expired—thus giving a coördinate branch of this Government, in making appointments to office, no opportunity of passing upon the constitutionality of the appointment.

The Senator from Virginia referred the other day to the extraordinary expense that was incurred in sending Mr. Collier, the first collector, to California. He stated that from official papers in his possession he knew that there was nearly $35,000 expended for that purpose, furnished by the quartermaster's department. What became of the property? Was it, or any portion of it, ever returned? Certainly not. Here was an expenditure of near $35,000 of public money in sending a collector to California, when he could have gone there by Panama in five or six months less time for $500, and should have paid his own expenses. He had as long a tail in his escort as a comet. A number of them, when they got to California at the expense of the Government, went their way—some to the gold diggings, not connecting themselves with the Government at all. I do not wish to do an injury to any person, but it is my duty to state these facts, when, as I believe, the malpractice of the officers of the Government in California is likely to do great injury to that State in the appropriations which she now asks, and so much needs. It is a painful duty to arraign any individual, but I must state that this collector notoriously violated the law, in seizing the cargoes of French vessels; that he confiscated those goods, and, in further violation of law, peddled them through the country; sold them here and there, and never made any return of the proceeds of the sales of these goods, or none that was intelligible. When his acts were disavowed by the Secretary of the Treasury, and he was ordered to return these goods, they had been thus disposed of, and we were compelled, in order to do justice to the citizens of France, to pass a law to pay them from the Treasury of the United States. Claims thus arising from the illegal acts of this collector to the amount of a million of dollars, as I was told by the French consul at San Francisco, have been presented to this Government, and have and now are being paid at greatly reduced estimates by the Secretary of the Treasury. Was not this a great abuse of power, which has resulted in a great loss to the Government? In addition to this, it was charged against this officer by members of his own party that he had, in violation of the sub-treasury law, used the public funds that came into his hands for speculative purposes, which should have subjected him to criminal prosecution. Notwithstanding these violations of law, the knowledge of which was in possession of the Administration, when the districts were changed, the same individual, with these heavy and grave charges hanging over him, was again renominated to the Senate for the very important office which

he had before held. But such was the effect produced on the Senate by the rehearsal of these facts that he was almost unanimously rejected. The official records of the country prove that this gentleman, on whom I wish to inflict no injury, stands charged on the books of the Treasury as being in default to the Government for hundreds of thousands of dollars.

Mr. DAWSON. Will the Senator from California give the name of the officer to whom he alludes?

Mr. GWIN. I have already stated that these charges are against Mr. Collier, the first collector of San Francisco. I do not wish to inflict any injury on him, or prejudice him in the defense of his case; which is now undergoing investigation in the courts. I will state another fact. I want the Senate to bear in mind the dates of these transactions. Mr. King's appointment was in April, 1849, immediately after the coming in of the present Administration; for I look upon it as being but one Administration from the 4th of March, 1849, to the present time. The date of Mr. Collier's appointment is coeval with that of Mr. King's. I have read from official documents to show that the whole of the military and naval power of the Government on the Pacific coast were put under the control of Mr. King. I will now show, from the same documents, that the collector holding the revenues of the Government was subject to a similar control, as I stated some time ago:

TREASURY DEPARTMENT, *April* 2, 1849.

SIR: This will be handed to you by the Hon. T. Butler King, if there should be in his opinion occasion for so doing. The object of this letter is to impress upon you the desire of the President that you should, in all matters connected with Mr. King's mission, aid and assist him in carrying out the views of the Government as expressed in his instructions from the Department of State, and that you should be guided by his advice and counsel in the conduct of all proper measures within the scope of those instructions.

I am, very respectfully, your obedient servant,

W. M. MEREDITH,
Secretary of the Treasury.

JAMES COLLIER, ESQ.,
Collector of the Customs, Upper California.

About the same time, in 1849, a gentleman from the State of Missouri, General John Wilson, was appointed an Indian agent for Salt Lake; and he, also, was furnished with an extravagant outfit and escort to conduct him to his agency.

He went to the Salt Lake, and stayed there long enough to write a letter or two. He then went to California with his family, his books, and his baggage of all descriptions. He was an emigrant, moving at the Government expense. He reached the valley of the Sacramento about the commencement of the winter season, could carry his effects no further; buried them, and hurried on with his family. By an order that emanated from the Secretary of War, a detachment of the army was ordered out the following spring to bring in the private property belonging to this Indian agent, transported for him at Government expense by the Salt Lake to California. I was told by the assistant quartermaster, who fitted out the expedition, the principal object of which was to perform this service, that the cost was little less than $100,000. This is another of the items that creates the necessity of deficiency bills, and charged as an expenditure in California. After General Wilson got to California, he resigned his agency, but no censure was cast on him for having passed through the country where he was assigned to duty, and emigrating, at such an enormous expense to the Government, to another part of the country; but he was actually appointed to another office in California. He was made navy agent at San Francisco, an office of great importance, the emoluments of which he received for a long time without giving the bond required by law; and he never did give a bond that was accepted, and the office was abolished to get clear of him. This same gentleman is one of the high priests of the Whig party in California. He lately presided over one of the largest Whig conventions which ever assembled in that State.

I allude to General Wilson in no spirit of unkindness, but to show where a large amount of the public money charged to California has gone. I put it to the account of a mal-administration of this Government, which commenced in the spring of 1849.

I will now go back and show the origin of the abuses of which I complain, which is inflicting such deep injury upon my State; for I believe that there was never such recklessness known since this Government was formed in the expenditure of the public money, as has been exhibited there.

It was an important era in the history of this country, when, on the 4th of March, 1849, a successful General was installed into the office of President of the United States—one who had been all his life, from early manhood, in the Army of the United States—who had never voted, and possessed no knowledge of civil affairs.

This important event has laid the foundation of the subsequent recklessness and disregard of law in expending the public money, especially in the military department of the Government. I speak for my own section of the Union. Let others speak for theirs.

In order that I may be fairly understood by the Senate when I am speaking of events that occurred in California, which may not be so familiar to other members as to myself, I will read an extract from a letter addressed by Colonel Mason, Military Governor of California, to the Secretary of War, after he received the news of the peace with Mexico. After stating that he had anticipated the instructions in regard to the peace, he says:

"The first part of the Secretary's instructions were therefore anticipated, and I have now only to fulfill the latter part, viz: 'to take proper measures with a view to its (Upper California) permanent occupation.'

"The above are the only instructions I have received from the Department to guide me in the course to be pursued, now that war has ceased, and that the country forms an integral part of the United States. For the past two years no civil government has existed here, save that controlled by the senior military or naval officer; and no civil officers exist in the country, save the alcaldes appointed or confirmed by myself. To throw off upon them or the people at large the civil management and control of the country, would most probably lead to endless confusions, if not to absolute anarchy; and yet what right or authority have I to exercise civil control in time of peace in a Territory of the United States? or, if sedition and rebellion should arise, where is my force to meet it? Two companies of regulars, every day diminishing by desertions, that cannot be prevented, will soon be the only military force in California; and they will be of necessity compelled to remain at San Francisco and Monterey, to guard the large depôts of powder and munitions of war, which cannot be removed. Yet, unsustained by military force, or by any positive instructions, I feel compelled to exercise control over the alcaldes appointed, and to maintain order, if possible, in the country, until a civil governor arrive, armed with instructions and laws to guide his footsteps.

"In like manner, if all customs were withdrawn, and the

ports thrown open free to the world, San Francisco would be made the depôt of all the foreign goods in the north Pacific, to the injury of our revenue and the interests of our own merchants. To prevent this great influx of foreign goods into the country duty free, I feel it my duty to attempt the collection of duties, according to the United States tariff of 1846. This will render it necessary for me to appoint temporary collectors, &c., in the several ports of entry, for the military force is too much reduced to attend to those duties."

Here is an honest avowal that he has no authority to exercise civil control in time of peace in a territory of the United States. The necessity of the case may have justified this assumption of power, but never that of levying duties by his simple edict under the tariff of 1846.

Thus at the close of the war with Mexico, this officer, who was in command of the Army in California, notified the Government, that to prevent anarchy, a *de facto* government must be maintained until Congress established a legal one. He also, under the tyrant's plea of necessity, extended the revenue laws of the United States to California. Before Congress acted at all, he decreed that the tariff of 1846 should be enforced there, and under this decree duties were exacted. When this letter reached the Secretary of War, the assumption of civil authority was overlooked, as the emergency arising from the neglect of Congress to create a government justified it. The Secretary of State, Mr. Buchanan, in a letter to Mr. Voorhies, post office agent, justified the formation of this *de facto* government. The question as to the power to collect duties, which had been assumed by Governor Mason, was referred to the Secretary of the Treasury. On the 7th October, 1848, he issued a circular, in which he stated explicitly that there was no power to collect duties in California. I will read it:

"On the 30th of May last, upon the exchange of ratifications of our treaty with Mexico, California became a part of the American Union; in consequence of which, various questions have been presented by merchants and collectors for the decision of this Department.

"By the Constitution of the United States it is declared that '*All treaties* made, or which shall be made, under the authority of the United States, *shall be the supreme law of the land*.' By the treaty with Mexico, California is annexed to this Republic, and the Constitution of the United States is extended over that Territory, and is in full force throughout its limits. Congress, also, by several enactments, subsequent to the ratification of the treaty, have distinctly recognized California as a part of the Union, and have extended over it, in several important particulars, the laws of the United States.

"Under these circumstances, the following instructions are issued by this Department:

"1st. All articles of the growth, produce, or manufacture of California, shipped therefrom at any time since the 30th of May last, are entitled to admission, free of duty, into all the ports of the United States.

"2d. All articles of the growth, produce, or manufacture of the United States, are entitled to admission, free of duty, into California, as are also all foreign goods which are exempt from duty by the laws of Congress, or on which goods the duties prescribed by those laws have been paid to any collector of the United States previous to their introduction into California.

"3d. Although the Constitution of the United States extends to California, and Congress have recognized it by law as a part of the Union, and legislated for it as such, yet it is not brought by law within the limits of any collection district, nor has Congress authorized the appointment of any officers to collect the revenue accruing on the import of foreign dutiable goods into that Territory. Under these circumstances, although this Department may be unable to collect the duties accruing on importations from foreign countries into California, yet, if foreign dutiable goods should be introduced there, and shipped thence to any port or place of the United States, they will be subject to duty, as also to all the penalties prescribed by law when such importation is attempted without the payment of duties."

He reiterated this statement in his annual report at the opening of the next session of Congress; and President Polk, in his last annual message, said most emphatically that no such power could be exercised. Here is what they say:

"The revenue laws not having been extended to California, no duties could be collected there, but the Department exercised all its authority by issuing the circular hereto annexed, [which I have just read,] (marked S,) opening free trade, under the Constitution, between its ports and those of the rest of the Union, at the same time guarding the revenue from loss, as far as practicable."

"No revenue has been, or could be, collected at the ports in California, because Congress failed to authorize the establishment of custom-houses, or the appointment of officers for the purpose.

"The Secretary of the Treasury, by a circular letter addressed to the collectors of customs on the 7th day of October last, a copy of which is herewith transmitted, exercised all the power with which he was invested by law."

When the news of this disavowal of the power that had been exercised by Colonel Mason, as *de facto* governor of California, reached that country, application was made to Commodore Jones, (who was in the bay of San Francisco with a naval force, to execute the tariff of Governor Mason,) to know whether the circular of the Secretary of the Treasury, and the message of the President, did not make it his duty to permit vessels carrying supplies to the citizens of California to enter the ports of that country and land their cargoes without paying duties? What was his reply? It was very brief. He said he intended to execute the tariff established by Colonel Mason, with all the power under his command; that is to say, if it was not obeyed by the citizens of California, and by those carrying supplies to them, he would use the Navy of the United States to sink their ships, and starve the people into obedience.

When intelligence of this expected collision between the people of California and those in command of the Government forces reached here, was the conduct of these officers censured? Not at all. It was silently acquiesced in, and therefore tacitly approved.

I have thus stated, at some length, the history of events in California, which resulted in the collection of what is known there as the "civil fund;" and will be pretty well known here by the same title before you are done with it. The temptation to use it for objects not provided for by any law, could not be resisted; and thus was laid the foundation of the enormous expenditures upon objects of doubtful necessity, of which we have heard so much. But I will state here, in reference to the responsibility of expending this money, charged upon the assistant quartermasters in California, that I do not indorse this charge unless it is proved that they acted without authority. If they acted under orders from a superior officer, which were sanctioned, or not disavowed, the Secretary of War, the head of the Department, and not the subordinate, is responsible. The Quartermaster General is a subordinate—is the head of a bureau; and if he, or any of his subordinates, violated the law in expending the public money, it was the duty of the head of the War Department to report him or them to the President of the United States for dismissal, or to be tried by a court-martial. I am prepared to say, that the Quartermaster General, and his subordinates in California, so far as I know, have always acted under orders from

superior authority; and that every abuse (and there are many in the expenditure of the public money in that country) has been sanctioned, either tacitly or openly, by the head of the War Department. I do not attach the least blame to the present Secretary, because the abuses and assumptions of power to which I have referred originated before he came into office, and I believe he is diligently engaged trying to put a stop to the extravagant expenditures of his Department. But I am looking to the system which was established in 1849. The Quartermaster's Department is not responsible, and should not be made the scape-goat, and bear the blame that properly attaches to the head of the Administration.

Mr. DAWSON. Will my friend from California yield the floor for a moment, for the purpose of examining into this matter? He says that, in the Quartermaster's Department particularly, enormous abuses have been practiced. As he has drawn our attention to them, will he state where they are ascertained to exist, that we may know where to guard against them for the future?

Mr. GWIN. I am coming to that, and shall read from the documents presently. But the gentleman misunderstands me, when he says I refer to the Quartermaster's Department particularly, and charge it with enormous abuses. I say that there has been a wasteful expenditure of public money in California, not only in the Quartermaster's Department, which I will show has only obeyed orders, but I think I may add in nearly every department of the Government under Executive control. I will now read from a report of Major Vinton, one of the most intelligent officers of the Quartermaster's Department, and the senior officer of the department in California, dated March 29, 1850:

"GENERAL: I have the honor to report that, in compliance with your orders of the 5th of April, 1849, to proceed to California, and there take in charge the direction of the affairs of the quartermaster's department of the Pacific division of the Army, I embarked at New York on the 17th of April, 1849, (with $150,000 in specie under my care,) and arrived at Panama on the 2d of May. At that place I was detained twenty-four days by untoward circumstances, and reëmbarked on the Pacific the 23d of May, for San Francisco."

After going on to state the situation of affairs which he found on his arrival in California, he describes the point which had been selected as the great depôt for the army and navy of the United States on the Pacific. I will read what he says on that subject:

"By the united judgment of Major General Smith and Commodore Jones, a place situated on the north bank of the straits of Karquinez, called Benicia, has been selected as the most favorable locality for our military and naval depôts. It is with great reluctance, therefore, that I venture to describe this position, believing, as I do, that most of its important features are objectionable, or rather, that it is lacking in many attributes which are requisite in a site designed for the purposes that this has been. Geographically it has but few defects, being in a direct line of communication with the ocean, having good anchorage, deep water, and free approaches to its shore for the unlading of the largest class of ships. Here its advantages cease, and they relate more to the interests of commerce than to the peculiar fitness of the place for a military station and a depôt of supplies. Topographically, it is uninviting in the extreme, possessing an aspect neither of beauty nor of usefulness. Hills, barren of trees or any other vegetation but the wild oats, rise abruptly from the water, and, swelling onward to the interior for six miles, are utterly destitute of wood; but beyond that region the scrubby oak makes its appearance in single trees, or in small clusters, affording but a scanty supply for present consumption. Fresh water is only found in one small spring, about a mile westward from the depôt. This has to be shared with the citizens of the town of Benicia.

"Having in view, then, that these two great elements, which invariably form the first principles in making a choice for the residence of a community, are wanting at this place, I think the defects of the position are made manifest.

"It has been supposed that the waters of the straits, at certain seasons of the year, may be relied on for the use of the troops; but I think this erroneous. It is only at a certain stage of the tides, combined with very high water in the Sacramento and San Joachin rivers, that the water of the straits is palatable, and then it is deemed by some to be unwholesome. A well fifty feet in depth was dug by Lieutenant Colonel Casey's company, but the water proved brackish and unsuitable for use.

"The rocks forming the base of the hills seem to have been, by some convulsion of nature, thrown upwards from a horizontal position, giving a dip towards the straits, by which the water cannot be retained below the surface. Artesian wells may, by persevering probing, remedy this great evil, and it is the only reliance we now have. No expense should be spared to procure scientific as well as practical men to push, vigorously, the search for water by such means; and I must earnestly urge the subject to your notice as an enterprise upon which the welfare of the depôt and its inhabitants are to depend.

"Previous to my departure for Oregon, I caused to be purchased an instrument for boring, and placed it under the maaagement of Mr. Bomford, whose report will be found in the appendix. Although he has not met with full success, I feel confident that, with more perfect apparatus, water of a good quality may yet be obtained convenient to the depôt. But to guard against a failure through such means, the commanding general is desirous of providing in another manner for a supply of water for the use of the post.

"He proposes that, at a point adjacent to some of the larger buildings, a cistern to contain from two hundred thousand to three hundred thousand gallons of water be constructed; the bricks and cement of which it is to be formed to be brought from the United States. But as expensive as artesian wells are, they would cost far less than such an undertaking. Water remains to be provided, and the choice of means is left for your decision. Small wooden cisterns have been constructed near the store-house already erected; but the supply from them is only adequate in the rainy season.

"Wood can be obtained on Suisun bay and on the Sacramento river; but if procured by contract, under the present rate of wages for labor, it would form an item of expenditure surpassing the belief of the most credulous; and if attempted by the labor of our troops, desertion would inevitably follow, to the annihilation of the military force so employed."

This selection laid the foundation of large expenditures in California. The officers who made the selection were subordinate to the Secretaries of War and the Navy. Their action was not final or effective until sanctioned by the heads of these Departments. The Secretary of the Navy did not approve of the selection, or if he did, there has been no expenditure of public money towards the establishment of a navy-yard there. He waited for Congress to act, and we now have the subject under consideration. Not so with the Secretary of War. Notwithstanding the report of Major Vinton, made near two years ago and laid before him, where the most palpable defects in the location are clearly proved, he has never disapproved of the act of the commander of the Pacific division; and therefore I hold him responsible for the entire expenditure of the public money there. I will call the attention of the Senate to a few more extracts from this document, and will thus show why I introduced the civil fund into this discussion:

"In some of my reports, made while stationed in California, I had occasion to call your attention to the fiscal concerns of the quartermaster's department under my charge. The large sums carried to that country by Major Fitzgerald and myself, were speedily expended. Indeed, I found that on my arrival there the debts contracted by my predecessors were so large as to leave no other resort for

means to carry on the current duties of the department than the 'civil fund' of California, so called, which had been raised, in part, by military contributions during the Mexican war, and otherwise by the collection of duties at the custom-house.

"This fund, being under the control of the Governor of the Territory, was placed for safekeeping in the custody of some one of the disbursing officers of the quartermaster's department. As it had accumulated to a cumbrous amount, and, from the character of the buildings at San Francisco, no good place of security could be found in which to deposit it, it was deemed expedient and safe to lend such sums as were needful for the urgent wants of the army, to be replaced at a subsequent and convenient period by remittances from the United States. But for this resource the operations of the quartermaster's department would have been much impaired if not entirely stopped for want of funds. And such had been the extravagant wants of the department, by the unforeseen increase of the demands upon it—extending beyond any, even the wildest conjectural estimates that could have been formed—that the drafts upon this fund had at one time become alarming, and I was apprehensive that the sums so expended might exceed the appropriations for that division of the army. Being assured, however, by the general commanding, that any excess of expenditures would be provided for by future appropriations by Congress, the 'civil fund' continued to be our reliance. In relation to this subject I have written extensively enough before to render further remarks unnecessary; yet, as it may not be well understood how the civil fund has been created, I will remark that in its accumulation it may be classed under three distinct heads, viz:

"1st. The money received from military contributions during the war with Mexico.

"2d. The amount derived from the collection of duties on imports under the administration of Colonel Mason, without the authority of law, and subsequent to the treaty of peace with Mexico, and prior to the arrival of Major General Smith; and

"3d. The amount which accrued from the collection of customs after the 1st of March, 1849, under the circular letter of General Smith, which made the duties collected subject to the future action of Congress—the sums being voluntarily deposited by the importers in the hands of the agents of the Government.

"All drafts upon these deposits by the disbursing officers of the army have been considered as loans, to be replaced after the action of Congress shall have been had in relation to the fund."

These extracts show an extraordinary state of affairs. The $150,000 taken out by Major Vinton, and I know not how much by Major Fitzgerald, is speedily exhausted. But this was but a drop in the bucket in fitting up this new depôt, and carrying on the service in other parts of the State. The depôt was likely to be brought to a stand-still. What is to be done? Why, borrow from the civil fund. Presently the sums thus borrowed become so enormous, fears are entertained that they will exceed the appropriations made by Congress, but the commanding general tells the quartermaster to go on, and pledges Congress to provide for this excess of expenditure. This pledge in this quartermaster's report is brought to the notice of the Secretary, who expresses no dissatisfaction at this assumption of power. He tacitly assents to this use of the civil fund, and thus with his sanction hundreds of thousands of dollars are expended in establishing a depôt, in the face of a most unfavorable report of Major Vinton as to the site.

The quartermasters were frightened at this system of borrowing money to carry on a work not authorized to be built by Congress—were frightened at exceeding the appropriations made by Congress to meet the expenses of their department; but the commanding general said go on; the Secretary of War acquiesced, and another large item is thus made up for a deficiency bill.

One word more, and I will pass on. Major Vinton acknowledges that Colonel Mason collected the civil fund without authority of law. He also refers to the voluntary deposit made under General Smith's regulations, these voluntary deposits being made under the threat, that if any importer should refuse, his vessel would be driven from the coast by Commodore Jones's guns.

Now, I ask this question, *Cui bono?* What was the necessity for these expenditures? It may be said, to protect the people of California in the event of war. There could have been no other justifiable reason given for expending such vast sums of money without authority of law, unless there was a pressing necessity for it. I will read from the report of another quartermaster, Major Allen, to show what benefit the people of California were to derive from expending such sums in establishing a new and expensive depôt on a large scale to quarter the army:

"I entered upon duty in California on the 1st of July, 1849, and took post at the place selected for a general depôt, on the straits of Karquines, near the town of Benicia, under the direction of my predecessor. The quartermaster's stores had been transferred to this location from San Francisco, and were piled upon the ground near where it was proposed to erect storehouses; having no cover but the old sails of vessels, and no protection but the watchfulness of a single agent. The time for which the storehouses at San Francisco had been rented, expired on the 1st of July, and the enormous rent demanded per month for their continued occupation determined the commanding general to remove the stores in advance of any improvements, presuming that the loss of property would be less in value while thus exposed, than the expenditure required for its storage.

"I found two companies of the 2d infantry stationed at this point; the officers with families were quartered upon an old hulk moored near the shore, and the single officers, together with the soldiers, were living in tents upon the shore. One half of the men belonging to these companies had already deserted, and the remainder had ceased to be soldiers excepting in name. They refused to work unless paid the *mining* value of labor, and they could not be trusted as a guard over the public property. So lax had become the discipline, and so little confidence had their immediate commanding officer in their fidelity, that he declined issuing arms to them, and did not attempt to exact from them any extra duty whatever."

To avoid the enormous rents of San Francisco, hundreds of thousands must be expended in building a new depôt. And for what? To quarter troops for the defense of California, that could not be trusted by their officers with arms in their hands; the officers starving, (for it is well known they could not live on their pay,) and the soldiers, to whom the people were to look for defense, deserting. Vast sums paid to laborers to build barracks for soldiers, in such a state of insubordination, that they would not work, and could not be intrusted with arms, or with the charge of the public property! With a full knowledge of these facts, the Secretary of War sanctions these enormous expenditures on a depôt established without authority of law, with the full knowledge that no corresponding benefit could result from its establishment, either to California or the United States. I intend it to be distinctly understood, that these extraordinary expenditures were known to the Secretary of War, and not disapproved of by him, for Major Allen says, in the report I have just read from, (the italics are mine)—

"That the cost of the improvements made, and services rendered, have no parallel in the history of the quartermaster's department, I am fully aware; but private, as well as public interests, have been subordinate to a state of things—have acknowledged a standard of value—which has no parallel in the history of the world. My correspondence with you, during this year, will show with what reluctance I have submitted to circumstances which I could not control. *The silence of the War Department, until*

rccently, induced the commanding general to believc that the improvements he was directing had at least the tacit consent of the higher authoritics, and, as the expenditures had periodically been reported, it was presumcd that they had acquiesced in the necessity of submitting to the current ratcs of th country."

"I do not remind you of this state of things for the purpose, at this late day, of giving you information. For a portion of the period to which I now refer, the Department, herc, was represented by an officer of superior rank to myself. It was the special duty of this officer to report to you every circumstance attendant upon the extraordinary expenditure of money in this division. He had full knowledge, being present, of every transaction. I have not seen his report, but I have no doubt, from the vigilance, zeal, and intelligence manifested by this officcr, that but little was omitted which the subject suggested, and nothing that was requisite to a clear and explicit understanding of the condition of the country. From this source alone, I may venture the presumption that it was made known to the Department at an early day, the impossibility of making any improvements here without enormous cost, or of fitting out or providing transportation for any military movement, without an expenditure of money exceeding in amount tenfold, at least, thc outlay incident to like service on the Atlantic side. A retrospective inquiry implies an absence of this knowledge and invites explanation, which I have given, not, however, with the expectation of stating any new facts."

"Every transaction of mine has, however, been subjected to the watchfulness and control of a superior authority, and a superior discretion. My immediate commanding general is accordingly my most competent witness; and you will find in the accompanying papers ample evidence that my whole conduct has his full and entire approval."

Mr. DAWSON. What is the date of that report?

Mr. GWIN. June 30, 1851. It is in the Quartermaster General's report, sent in at the commencement of this session. I repeat the fact, these expenditures were known to the head of the War Department; and that the commander of the military division on the Pacific had no reason to believe that he was acting contrary to the wishes of the head of that Department, when he received no intimation of it. Major Allen entertained no doubt but that all of his acts were approved, until a very late period. He was not censured, nor attempted to be censured. No one can assert that he acted without authority. He refers to his commanding general, who approved all of his acts. Has this commanding general been censured for giving this approval? Not at all. The whole of this movement, and of this extraordinary expenditure of the public money was known to the head of the War Department, and he never disapproved of it. As to its necessity, I have shown that the army was in a state of utter disorganization; that the officers were starving—that is to say, no officer could live on his pay—and the men deserting; that the soldiers at Benicia—and I suppose it was the case at every other point—could not be trusted. The regiment commanded by Major Seawill, as he informed me, was reduced to two hundred men; the soldiers would not labor without the pay of a workman in the mines—would desert if they were required to do the duty of a soldier; which made it necessary to hire laborers and mechanics at from four to fifteen dollars a day, to do what soldiers in other parts of the country were required to do, and did do; to build barracks for the army, when, from desertions, there was no army, and but few soldiers who could be relied upon.

I invite the attention of the Senate to the fact that there was a much larger number of officers and soldiers in California before the arrival of those for whose accommodation this expensive depôt was established, who were comfortably quartered in convenient and appropriate sections of the Territory; that there were quarters for soldiers, as well as for the officers and their families, (without the necessity of the latter being cooped up in old hulks of ships)—at Monterey, Santa Barbara, Los Angeles, San Diego, and Sonoma. There were the New York regiment, the Mormon battalion, with the officers and soldiers of the regular army, which formed a larger force in California before the close of the war than we have ever had since. It is thus evident that these extraordinary expenses to provide new quarters were entirely unnecessary, and that the soldiers were thus brought nearer to the mines, and tempted to desert. Major Vinton says, in regard to the post at Benicia, when he arrived there, there was no wood, that they would have to get it from Suisun and the Sacramento river at extraordinary prices, probably $100 a cord. I do not pretend to be familiar with military affairs, but officers of the army in California, of high character, have always asserted that there was no necessity of establishing the depôt at Benicia. This I know to be the opinion of General Riley. I do not censure the chief in command of the Pacific division; it was a matter of judgment with him; but the head of the War Department, if he differed from General Smith, should have disapproved of his acts, as did the Secretary of the Navy, by not carrying out the recommendation of Commodore Jones, until it was approved and sanctioned by Congress.

I have brought to the notice of the Senate the enormous expenditure of the War Department in California not authorized by law, and sanctioned by the head of the Department, in order to show the contrast in the other Departments of the Government. I will refer first to the Navy Department, which was cautious in adopting the recommendations of the commodore in command on the Pacific, involving the expenditure of large sums of money until Congress was consulted. The Navy could not participate in the brilliant achievements of the Mexican war, for Mexico had no navy to contend with on the ocean. The glory and renown of that war was monopolized by the Army. One of its most successful generals was, from the enthusiasm of the moment, elected President of the United States. The success and brilliant achievements of the Army, during the war, seemed to impress upon the mind of some of the officers of that branch of the public service that they were privileged to vary from the rigid restrictions that had been imposed upon them before the war, and that they could expend the public money on objects which they conceived to be for the public good, without the previous sanction of law, and they relied on the military chief who ruled the country to shield them from censure.

Mr. DAWSON. I would inquire of the Senator from California, at what particular time that depôt was ordered in the neighborhood of Benicia?

Mr. GWIN. In the spring of 1849.

Mr. DAWSON. What time in the spring of 1849?

Mr. GWIN. It is mentioned in the reports of General Smith, to which I have not yet referred. The report of the location was forwarded to this city after the 4th of March, 1849. It was not known to the former Administration.

Mr. DAWSON. What I desire to know is, whether the location was made under the present or the last Administration?

Mr. GWIN. It was made since the 4th of March, 1849.

Mr. DAWSON. Under what orders?

Mr. GWIN. There were no orders issued to General Smith by the last Administration to make any such location.

Mr. DAWSON. By whom was the depôt established?

Mr. GWIN. By the general in command of the Pacific division, and sanctioned by the Secretary of War.

Mr. DAWSON. I want to know who the military commander was at the time the depôt was ordered?

Mr. GWIN. General Smith.

Mr. DAWSON. General Persifer F. Smith.

Mr. GWIN. I give General Smith full credit for acting as he thought for the good of the country. But I contend that it was the duty of the Secretary of War, who should have been familiar with the revenues of the department, and the extraordinary expenditure that would result from the establishment of this depôt, to have required that the old quarters of the army during the war, should be used until Congress should determine to establish new localities in the sections of the State where they were needed.

Now, Mr. President, I come to another matter. In the Indian appropriation bill, passed on the third of September, 1850, we have this clause:

"To enable the President to hold treaties with the various Indian tribes in the State of California, $25,000."

This is a modest sum of money, nothing like as much as it should have been, but all that Congress thought proper to appropriate. Acting under the authority thus conferred upon him, the President of the United States proceeded to organize a Board of Commissioners. He appointed three, two of whom were resident on this side of the Rocky Mountains. He sent them to California, no doubt at the public expense, to negotiate treaties. These commissioners took with them authority to call to their aid the army of the United States stationed in California. That is to say, they took with them authority to call upon the commander of that military division for escorts. I wish it to be borne in mind that all this was to be done under an appropriation of $25,000.

One of the Board, and its disbursing officer, on the 11th of February, addresses the Commissioner of Indian Affairs, as follows. After casting a slur on the State authorities, that they were belligerent; that war with the Indians was profitable, because soldiers got from five to ten dollars per day, and "Uncle Sam" would foot the bill, (very doubtful,) he proceeds to say:

"We are now *en route* for the Mariposa country, with an escort of one hundred and one picked men, ten officers, three six-mule covered wagons, and some one hundred and fifty pack mules, to carry our provisions, ammunition, and Indian goods; all under the command of Captain E. D. Keyes, an experienced and excellent officer, from whom we feel assured not only of protection, but of cordial cooperation, in our endeavors to pacify the Indians, with the olive branch rather than the sword. We arrived here by steamer from Benicia, on the 8th instant; yesterday evening, the horses and mules for transportation arrived; to-day, we are arranging for the journey, and expect to be on the road, in the direction of the Tulare Lake, early to-morrow morning."

"We are gathering all the information we can, and by no means despair of effecting, in the name of their Great Father, the President, a very general pacification; but it will be a work requiring address, time, and, probably, a large outlay of money for goods and provisions."

I will now show how this escort was fitted out, by reading from a letter of T. Butler King, collector at San Francisco, to the Commisioner of Indian Affairs. The quartermaster's department was out of funds, and had made application to the collector for assistance. He says:

"I may be permitted to add, that having heretofore made advances to the amount of $150,000, for the purpose of enabling the troops to move in support of the commissioners; and without I had taken the responsibility, not a step could have been taken for the pacification of the Indians, and the prevention of probably a long and disastrous Indian war; and though *four months* subsequently I received an approval of that advance by the Quartermaster General, yet I have been reminded by the Commissioner of Customs, in a letter received by the last mail, that my conduct in this matter *is contrary to law.*"

Here is information that will enlighten the chairman of the Finance Committee as to the origin of these deficiencies. The collector is surprised to find he has acted "contrary to law," in advancing public money to an officer in advance of an appropriation made by Congress. I have been anxious to ascertain what amount was expended on these escorts, but cannot get the information from the Quartermaster's Department, owing to the mixing up of accounts. I therefore adopt Mr. King's letter as the most definite information I can command.

I wish it to be borne in mind that this commission was organized on an appropriation of $25,000; and, before they commence their labors, they involve the Quartermaster's Department in an expense of $150,000, which is borrowed from the collector at San Francisco.

The collector is charged with acting contrary to law in loaning the money; but he is in no danger. He will be indemnified by transfer warrants, or in a deficiency bill. I allude to this transaction to show that the War Department has become the predominant power of the Government, whose subordinates act without authority of law, with an impunity not tolerated in any other Department in the Government. Thus I find this escort provided with money from the collector's office, contrary to law, paid to agents subordinate to this Board of Indian Commissioners, and obeying their orders. That, while from this $150,000 all supplies for this escort are paid for, the supplies for the commissioners and Indians, with whom they are treating, are bought on a credit, and have not been paid for to this day. And here in this deficiency bill there is, no doubt, an estimate for the deficiency thus created in the Quartermaster's Department, which we are called on to make an appropriation to meet, while not a dollar is appropriated to defray the expenses of the commissioners, and to pay for their supplies and those furnished the Indians while the commissioners were treating with them.

The commissioners, having the entire control of the expedition, are limited in their expenditures to the sum of $25,000 appropriated; and, although they have drawn drafts for the overplus of their expenditures, these drafts are protested, and the parties furnishing the supplies are unpaid; nor has the Department of the Interior asked for their payment, although the Secretary is aware that the expenditures have largely exceeded the appropriation.

In proof of this, I will read extracts from letters of the commissioners, found in the annual report of the Commissioner of Indian Affairs:

"We arrived accordingly at this camp on the 15th ultimo, found some Indians on the ground, and others continued to arrive daily until the 26th; when, having meanwhile treated the red men and their families to as many provisions as they could eat, and finding them in excellent good humor, we met them in council, explained to them the object and purposes of our mission, and submitted to them our propositions for a general treaty of peace, and a settlement of all existing difficulties." * * * * * *

"We have, therefore, been under the necessity of making pretty liberal provision under the head of 'subsistence,' and now advertise you that this course will have to be pursued throughout the whole State." * * * "For pressing demands, we have to do the best we can, fully satisfied that our policy is correct, and that it is, in the end, *chcaper* to feed the whole flock for a *year*, than to *fight* them for a *week*." * * * * * * * *

"The country set apart for them so far is very poor soil; but a small portion of it is adapted to agricultural purposes, but remarkably well adapted to the raising of stock; and we think it would be good policy to supply them liberally with *brood stock*, in addition to the beef cattle, which is indispensable for *present consumption*, as the faithful fulfillment of the treaties on their part will measurably depend on it. *They must have food.*" * * * * *

"This will require money, and it is a subject of surprise and regret that the appropriation for our use has been cut down *so small*. The amount required will be seemingly large, but, by pursuing the foregoing policy, it will be found to be small, in comparison, to all treaties where *annuities* are given." * * * * * * * *

"I have sent men among them who speak their language, and are influential, and placed beef cattle under the care of the traders, in order to supply their pressing necessities for food, and to induce them to come down from out of their mountain fastnesses, all of which it is to be hoped will have the desired effect of causing them to come in and conclude a treaty. I speak of this as the only true policy; further expcrience only confirms previous statements, that the Indians are numerous and formidable; and it is difficult, if not impossible, to subdue them by waging war; it is possible to make terms with them by exercising a proper and humane policy, making them not only useful to themselves, but to the white community at large." * * *

"I determined to discharge the escort that accompanied me through to that place, and return to San Francisco, or proceed down the coast with an escort of citizens, who kindly proposed to accompany me to the Indian villages in the vicinity." * * * * "On the 17th day of June, I addressed a note to Captain E. D. Keyes, who had command of the escort, dispensing with the further services of his command, a copy of which, together with his reply, I herewith inclose."

These extracts show that the commissioners controlled the escort, that they were incurring expenses largely exceeding the appropriation, yet we do not find that they were checked by the Department.

Soon after I returned home an alarming rumor prevailed, that there was danger of a general Indian war in the northern portion of the State, and in Oregon. One of the commissioners applied to me to urge Mr. King to make an advance on the appropriation of $25,000, which was made at the last session of Congress, but which had not been transmitted by the Department to the commissioners. I did advise Mr. King to make an advance of $5,000 on the appropriation, but distinctly disavowed any sanction of the policy or acts of the Board.

Some days since my colleague [Mr. WELLER] offered a resolution, which was adopted, calling for information in regard to the acts of the Indian agents in California. The reply of the Secretary of the Interior is not yet printed, which I very much regret, for I am anxious to use it on the present occasion. I have procured a copy of the letter of the Commissioner of Indian Affairs, that accompanies that report, which I will read to the Senate:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS, *April* 13, 1852.

SIR: In answer to the resolution of the Senate of the 6th instant, in which you are required to inform that body—

1. Whether the Indian commissioners or agents in the State of California, in their negotiations, have contracted any debts for which the Government is liable, and if so, the amount thereof; and

2. Whether any drafts drawn by said commissioners, or agents, have been protested by the Department, and if so, the amount—

I have the honor to transmit, herewith, copies of sundry communications from the Indian agents in California, from which it appears that they have contracted debts to the amount of $716,394 79; also, copy of a communication from the late sub-agent, (Johnson,) showing that he, too, has contracted liabilities to a considerable extent. The precise amount is not given, but it is believed to be upwards of $50,000, as I understand that his drafts to near that amount have already been presented.

The whole amount of the appropriations for Indian purposes in California was placed in the hands of the agents, and they had no authority whatever for exceeding that amount in their negotiations. They allege, however, that the pressure of circumstances was such as to justify them in the course they have pursued. Upon the correctness of this allegation depends, I apprehend, the liability of the Government to pay the debts they have contracted. To what extent it is correct, the Department has not the power to determine, nor has it the means of forming a satisfactory opinion. The question of the liability of the Government to pay these debts, must necessarily be decided by Congress; and presuming that a thorough investigation into the whole matter would be required, I have heretofore recommended that an appropriation be made to meet the expenses of such investigation.

A large portion of the debts above referred to, are in the form of drafts drawn by the agents on the Secretary of the Interior, and as they have not been presented to this office, I am not able to state the amount to which they have been protested.

In connection with this subject, I have the honor to transmit, herewith, copy of a communication, with accompanying papers, addressed to you by Hon. Thos. H. Benton, and referred by you to this office.

It may also be proper to state, that, in addition to the foregoing liabilities, a claim has been presented by Dr. W. M. Ryer, to the amount of $13,402, for his services in vaccinating Indians in California, the particulars of which are set forth in papers, copies of which are herewith submitted.

Very respectfully, your obedient servant,
L. LEA, *Commissioner*.

TO THE SECRETARY OF THE INTERIOR.

From this official statement, it appears the Indian agents in California have contracted debts beyond the appropriations made by Congress, to the amount of $766,000. That the greater portion of this indebtedness is represented by drafts drawn by the agents on the Secretary of the Interior, which were protested on presentation. I have before shown that $150,000 was drawn by the quartermaster's department from the collector at San Francisco, to defray the expenses of escorts to these Indian agents, which, added to the above amount, shows an expenditure in one year of about $1,000,000 based upon an appropriation of $50,000. The Commissioner of Indian Affairs, in the letter I have read, is quite non-committal. He says these agents had no authority to exceed the amount of the appropriation. Why, then, are they not dismissed? Here is an acknowledgment that they have exceeded their authority under the law, yet they are permitted to go unpunished. Two of them are still acting, and probably drawing more drafts, to meet with the fate of their predecessors, and the third left California, and at his leisure repaired to this city and resigned, drawing his salary up to the date of his resignation. These drafts are circulating all over the country. They

were given for supplies for the Indians, transferred by the parties who furnished the supplies, and large amounts are in the hands of third parties, who took them under the confident belief that they would be paid on presentation, by the Government. A single mail sometimes brings drafts to the amount of a hundred thousand dollars; all are protested on presentation, and the agents who are thus dishonoring the Government are permitted to go unwhipped of justice, and continue the system. This stand-still policy of the Executive will not shield him from the responsibility of these transactions. They must be defended or disavowed; if not disavowed by the dismissal of the officers, which is not the case, then the Department is tacitly sanctioning these acts, and will be responsible for the difficulty that must follow. The citizens of California have furnished these supplies, upon drafts drawn by officers of the Government. They did not ask for the authority under which these officers acted. It was not supposed that they would act without authority. Yet the drafts given in exchange for their property are dishonored, and no steps taken to get an appropriation to pay them. Numerous treaties have been made with bands of Indians, which treaties are withheld from us. In regard to them the Department preserves towards the Senate the silence of death. A part of the treaty-making power, yet treaties are made, and without waiting for our action, they are executed as laws of the land, if not with the approval of the Executive, certainly without any marked disapproval; for the parties who have committed these unlawful acts are still in the public service. A more dangerous assumption of power has never occurred in this country. It is without a parallel in the history of the Government. Three Indian agents, under the exclusive control of the Executive, make numerous Indian treaties, and before they are laid before the Senate, or even transmitted to the Executive, they commence executing these treaties as laws of the land; seize upon the country reserved; drive off the whites, in some instances buying out their possessions, and pledging the Government for payment, (I have numerous claims of this sort;) make large purchases of provisions to feed the Indians, which are paid for in drafts upon the head of the Department—drawn without authority, and protested on presentation; and yet these men are permitted to retain their offices, and continue in their lawless course. Can the Administration escape censure for these acts of its subordinates, by remaining silent? Are these transactions to be covered up by withholding the treaties from the Senate? While the dishonored drafts of the Government for near a million of dollars are still unpaid, shall the Executive be permitted to avoid all responsibility, by giving no opinion as to the acts of its subordinates? Where are the treaties? Why are they not transmitted to us? Some of them have been made for more than a year. We have been near five months in session, and yet we are not officially notified of their existence. Does the Executive approve of the policy chalked out in these treaties? If so, why not send them to us for our action? If he does not sanction this policy, why not notify the Senate of the fact, and appoint other agents to adopt a different policy? Is the Executive in favor of paying these protested drafts? If so, why not ask for an appropriation? I have been urging action on this subject ever since the session commenced, and all that I have been able to extract from the Department was an estimate for $10,000, to pay the expenses of an investigation into the acts of the Indian agents. The Commissioner of Indian Affairs speaks very complacently of this estimate, as if, by making it, the Department had done all that it was in duty bound to do. Charges of fraud rest upon these transactions. It is the duty of the Department to probe them to the bottom, and punish the guilty. Has this been done? I say no; and yet we are complacently told that Congress must look into it, as it is no business of the Department.

I am not disposed to cast censure upon any one, but there must be action on this subject. The people of California are up in arms against these treaties; yet they are withheld from us. I think I can anticipate their fate in this body, if they are ever sent to us. To show the state of public feeling in my State, I will read from a report made by a committee of the Legislature, to which the question of these treaties was referred:

"The committee to whom certain resolutions of the Senate, having reference to the Indian treaties made by the United States Commissioners, Messrs. Wozencraft, McKee and Barbour, and the true policy that the interest of the State of California requires should be adopted by the Federal Government, have, according to order, had the same under consideration, and respectfully submit the subjoined report and resolutions:

"Your committee in approaching the consideration of this subject, were deeply impressed with its importance. They saw a policy adopted by the Indian commissioners, deeply affecting the present and future prosperity of the State. Regardless of the extraordinary circumstances which impelled the wave of population to this State, they have undertaken to assign to the Indian tribes a considerable portion of the richest of our mineral lands. Regardless of the topographical character of our State, which presents an extensive surface of the most valuable grazing land of the earth, but with a comparatively limited quantity of land fully adapted to agricultural purposes, those gentlemen have undertaken to assign no inconsiderable portion of the latter in exclusive property to the Indian tribes, wholly incapable, by habit or taste, of appreciating its value.

"Your committee cannot understand the wisdom of this policy, nor can they believe that it is one to which this State will ever quietly submit. In examining this subject, they have been surprised to find that the policy of the Indian commissioners is not sustained, either by the practice of the Mexican Republic, or that for the last forty-five years of our own.

"It is well known to all those who are acquainted with the history of the Indian policy of Spain and Mexico, that the right of the Indian in the soil was never admitted nor recognized. The general policy of those Governments was to Christianize the Indians, and teach them agriculture, by bringing them into the missions, which were from time to time subject to their authority. The Indians thus brought together were subject to the authority of the priests, even to the extent of inflicting corporal punishment for disobedience of orders, &c., &c.

"This policy has produced a marked effect upon many of the tribes in California. Many of them had lost their wandering character, abandoned their hunter state, and had become valuable and indeed indispensable servants to the large rancheros, upon whose estates they were content to live. The policy of the Indian commissioners in collecting these Indians together, has been, so far, eminently injurious. They have deprived those engaged in agriculture and herding of their usual labor. They have burdened the country with the expense of supporting those who had previously supported themselves. They have taken from the labor of California some of her most important agricultural districts, and from the hardy adventurer from the distant States of this Union, large bodies of the mineral lands filled with the precious metals; and they have wrought all this mischief without one redeeming or corresponding equivalent. The Indian, though fed and clothed, is no happier; though professedly under the protection of the United States Government, he is less safe; though the land assigned him

is interdicted to the white man, he swallows his little substance, and the destruction of the race we desire to save is accelerated by the very means to which they have resorted. What, then, is to be done? It is a question full of interest and difficulty. Yet, your committee are firmly of opinion, that the true policy towards the mission Indians, and all those who are brought within the influence of the mission policy, is to let them alone. If thus treated, they will resume their former occupation, and supply, to a great extent, what is so much needed—that labor without which it will be long before California can feed herself. The Indians, moreover, would be happier, safer, and longer preserved from that destruction which seems to be inevitable.

"As to the wild Indians now located within this State, your committee must protest against locating them within our limits. Occupying an important frontier position on the great Pacific—a position of the greatest importance to the whole Republic—it is indispensable that this State should be wholly occupied by a homogeneous population, all contributing, by their character and occupation, to its strength and independence.

"To take any portion of the country west of the Sierra Nevada, for the home of the wild, and generally hostile Indians, would be so manifestly unwise and impolitic, that your committee cannot think that anything more is necessary, than thus to present it to public consideration. But the policy which suits California, has been one long established, and to which we claim an undoubted right. That policy is to remove all Indian tribes beyond the limits of the State in which they are found, with all practicable dispatch.

"Your committee ask if this has been the policy of every Administration since 1804—if in its prosecution, millions have been expended—if the happiest results both to the red man and to the white, have followed it—the country strengthened, and the Indians rescued from destruction; why is it, that the policy has not been pursued here, that the mischievous and antiquated system condemned by every Administration for nearly fifty years, and at war with all experience, should be attempted to be revived in this State from which especially it should have been excluded?

"Your committee therefore respectfully recommend the adoption of the following resolutions, with the concurrence of the House of Assembly:

"*Resolved*, (as the sense of the Senate and Assembly of the State of California,) That the policy pursued by the Federal Government towards the Indian tribes in this State, is wholly and radically wrong, and should be rejected.

Resolved, That our Senators in Congress be instructed to oppose the confirmation of any and all treaties with Indians of the State of California, granting to Indians an exclusive right to occupy any of the public lands in the State.

"*Resolved*, That the policy so long and steadily pursued by the General Government, of removing the wild Indians beyond the jurisdiction of States is conceived in wisdom and dictated by humanity, and is productive of tranquillity and happiness to the whole country, and that no other can with safety be adopted within this State.

"*Resolved*, That our Senators be instructed, and our Representatives requested, to use their best endeavors to procure the adoption, by the Federal Government, of the same course, towards the Indians of this State, that has been pursued in other States for the last quarter of a century.

"*Resolved*, That the Governor be requested to present to our Senators and Representatives, each, a copy of the foregoing report and resolutions.

M. M. WAMBAUGH, *Chairman*.
J. H. RALSTON,
B. FRANK KEENE,
JAMES MILLER."

There was but one dissenting voice in the committee in making this report, and the member dissenting was, as I am informed, personally interested in having the treaties confirmed.

There is danger in the delay of the Executive in acting upon this subject. The Indians expect to be fed, to be maintained without labor. Stop their rations and they will become vicious. They have been withdrawn from their usual habits of labor and former means of support, and they will not return to them. They will steal, rob, and murder, and thus bring on collisions with the whites that will result in the extermination of the Indians. They are located by these treaties in the midst of the white settlements; collisions must and will occur, if this policy is adhered to.

Mr. UNDERWOOD. Will my friend be kind enough to answer the question, whether this bill contains appropriations for money thus expended in the execution of treaties not yet ratified?

Mr. GWIN. Not in the execution of the treaties; but no doubt part of the deficiency in the Quartermaster's Department, which is provided for in this bill, resulted from the acts of these Indian agents, who, in making the treaties, were furnished with escorts at the expense of the Quartermaster's Department.

Sir, I have said, and again repeat, that the translation of a victorious general from the head of his army to the presidential chair, with no experience in or qualification for civil affairs, has had a baneful effect upon the administrative departments of the Government. With a military President to shield delinquencies, the executive officers of that department have exhibited a looseness in the performance of their official duties that was before unknown. When called on by Congress to reduce their estimates, they decline. When their estimates are cut down by Congress, they go on and spend largely over the amount appropriated, and demand of us the passage of a deficiency bill. Sir, we are losing all control over this department of the Government. If this military spirit continues to prevail—if we continue the policy of taking our Presidents from the chiefs of the Army—we will very soon be required to stop our deliberations, and merely register edicts. The subordinates of the War Department in their expenditures exceed the appropriations; the Government steps boldly up and demands additional appropriations, and they are granted. The subordinates of another Department exceed the appropriations in their expenditures. Are we called on to meet these deficiencies? Oh, no, the Department repudiates.

The military is the overshadowing power of the Government. In that department the subordinates may exceed the lawful appropriations with impunity. Yet when a couple of young officers, who had gallantly faced the enemy in Mexico, take a small contract to supply a portion of the army with forage, which is not prohibited by law, a great noise is made about it; and they are subjected to a court-martial. If I am not mistaken in this, there was personal pique, as well as a stern discharge of public duty. I mean in the proceedings in California, not with the head of the Department. Yet we observed the other day that the Senator from Georgia [Mr. DAWSON] was tenacious in giving the War Department the credit of investigating this abuse, instead of dividing the honor with the Senator from Virginia, [Mr. HUNTER,] whose resolutions brought the proceedings in this case before the Senate. There are much greater abuses (and I do not justify this one) in that Department, for which the Secretary will get yet greater credit if he eradicates them.

The Senator from Virginia [Mr. HUNTER] has stated that the expense of the quarter-master's department in California the last fiscal year was $827,000, and this statement has gone all over the Union; and when we ask for appropriations that are indispensably necessary, we are met with the argument that the expenditure there has already been enormous. This, as I have shown, has arisen from the unauthorized expenditures in that

country, and the abuses that grew out of collecting the civil fund. Can the chairman of the Finance Committee inform me whether we will be called to pass a deficiency bill to pay back the money borrowed from that fund?

Mr. HUNTER. I stated in the remarks I made on Friday, that the quartermaster's accounts were in arrears; they have not been settled, particularly those of California. But, I have been informed by General Jesup, since this bill was reported, that large accounts had come in from California, and that they would no doubt swell the amounts. I do not know the amount; General Jesup could not inform me what it was; and I do not believe that any man can tell the amount.

Mr. GWIN. I differ with the chairman of the Committee on Finance, when he says that the law of 1820 authorizes or sanctions, in the slightest degree, some of the items in these deficiency bills. Sir, I want to know what is to become of this provision of the Constitution of the United States, that—

"No money shall be drawn from the Treasury except in consequence of appropriations made by law."

The chairman of the Committee on Finance has shown that the appropriations made for the quartermaster's department for the year ending 1st of June, 1851, was $3,915,912, and the expenditures of the year, $5,286,124. I should like to know if there is any sanction under the law of 1820 for such a use of the public money, right in the face of this provision of the Constitution? Here is the appropriation, as shown by the chairman of the Committee on Finance, amounting to upwards of $3,900,000, and yet we are told that the actual expenditure exceeds $5,000,000. Now, I cannot see that any law can sanction any such use of the public money in the face of this provision of the Constitution.

I do not believe any law of Congress can authorize an expenditure of five millions, under an appropriation of three millions. I think the Senator is mistaken in his construction of that provision of the law. I think there is a necessity for rigid accountability, and that all subordinate officers, whose expenditures exceed the appropriations, or who fail to make returns, should be dismissed from the public service and disgraced.

I am in the performance of a painful duty, in commenting on these transactions. But that duty must be performed. The extravagant expenditures and lawless acts of Government officers in California, are producing fatal effects upon the best interests of that country. I am mortified to see a disposition in both Houses of Congress to withhold appropriations, and abstain from passing laws of vital necessity to my constituents, under the belief that there is no restraint upon public officers there, and what money is appropriated will be wasted with no benefit to the State or Government. I must expose transactions that give cause for these suspicions, and I will, regardless of the consequences. No portion of the country is suffering as much for the want of legislation as California. All we want is the proper and legitimate aid of the Government, and we will continue to advance with the giant strides of past years to the important position we are destined to occupy in the Union.

Note.—In the course of these remarks, financial statements are taken as made by the chairman of the Committee on Finance; but he has since, in one instance, corrected an error in his calculation, in stating the excess of expenditures, as stated by the Quartermaster General, over that given from the Register's Office, as showing a sum of $1,221,856, which was probably derived from military contributions or the California civil fund. He says: "The real excess is $241,847. The 'most material error to which this led was in stating 'the expenditure for the Army proper in the fiscal 'year ending June, 1851, at $965 per man. It 'should have been $875 per man."

REMARKS OF MR. GWIN,

In Senate, *April* 20, 1852,

On the introduction of a Bill in relation to Private Land Claims in California.

Mr. GWIN said: Pursuant to previous notice, I ask leave to introduce a bill supplemental to the act of Congress, approved March 3d, 1851, to ascertain and settle the private land claims in the State of California.

Leave was granted, and the bill was introduced and read a first time, as follows:

A bill supplementary to the act approved 3d March, 1851, "to ascertain and settle the private land claims in the State of California."

Be it enacted, &c., That it shall and may be lawful for the Board of Land Commissioners, in the examination of such claims, founded on Spanish and Mexican titles, as have been or may be presented to them, to take cognizance of any claim on agricultural lands, founded on actual inhabitation and cultivation before and at the passage of the said act of 3d March, 1851, which may be presented to them for lands falling within the limits of such Spanish or Mexican claims; and where it shall satisfactorily appear to the said commissioners that such inhabitation and settlement claim is an actual *bona fide* one, made at or before the period stated, and continued in good faith up to the passage of this act, it shall and may be lawful for them to recognize and finally confirm such claim as a donation, and for a quantity in the smallest legal subdivision that will embrace the actual improvement: *And provided*, That such quantity shall not exceed eighty acres, and for any such inhabitation and settlement claim which may be fully established before and confirmed by them, they shall issue a "confirmation-certificate;" and the Spanish or Mexican claimants, or their legal representatives, in the event of a final confirmation of their claims, shall be entitled to a certificate of new location for the area of such interfering donation claims, which certificate shall be located on any lands in California that at the time of location may be subject to entry at private sale.

Sec. 2. *And be it further enacted*, That the aforesaid Board of Commissioners, in the rendition of their decisions on the Spanish or Mexican claims, shall take special notice of, and designate the extent and locality of any interfering donation, which they may confirm under the provisions of this act on the grounds of actual inhabitation and cultivation, and the courts shall take cognizance thereof, and respect the same in any final decrees of confirmation they render.

Sec. 3. *And be it further enacted*, That for all such inhabitation and settlement, claims which may be confirmed as aforesaid, the said board shall issue confirmation certificates particularly descriptive of such claims, and shall return such certificates, with a certified abstract of the same, to the surveyor general, with a duplicate abstract to the Department of the Interior.

Sec. 4. *And be it further enacted*, That when such confirmed inhabitant and settlement-claims shall have been duly surveyed, patents therefor shall be issued upon the return to the General Land Office of the United States of the certificates of confirmation, accompanied by duly approved plats of survey.

Mr. GWIN said:

Mr. President: I ask the unanimous consent of the Senate that this bill may now have a second reading, with a view to reference. In making this

motion, I propose to show its object, and the reasons which induce me to urge that it may be speedily matured into a law.

It is known that under the governments which preceded the United States in sovereignty in California, a number of large claims had their origin, in virtue of which extensive bodies of lands are claimed as private property; and that before and since the change of government, and at the passage of the act of 3d March, 1851, there were titles of this class in which there was so much uncertainty as to what was their limits or position, that it was often impossible for settlers, in locating themselves, to know whether they were on the public lands, or upon what might be claimed under a Spanish or Mexican title. The consequence is, that settlers, innocent of any intention to encroach upon the claims of others, have gone to work and reduced into possession small parcels of land, and made valuable improvements within what it now appears is claimed as the property of others, under titles derived from the former governments. In doing this, they have imparted such additional value to the adjacent property as, in the ordinary transactions of life, might be regarded as a full equivalent for the small parcels they occupy. But I am not willing, even under this view of the case, that the owners of *bona fide* foreign titles shall lose a single acre of their lands. The object I have in contemplation is to do justice both to the settler and to the claimant under Spanish or Mexican titles. I wish to secure the *bona fide* settler in the soil covered by his actual improvements, according to the most minute legal subdivisions of the public lands that will embrace his residence and those improvements, and, at the same time, indemnify the Spanish or Mexican claimant by giving him other lands now the property of this Government. I think I know enough of the justice and liberality of the people of our country to satisfy me that a measure like this could not fail to be acceptable to them. I cannot believe that there is an extensive landholder or claimant in the State of California, that would be willing, had he the power, to dispossess and drive off the actual settler from the small piece of land on which he has established himself, and leave him and his family homeless, and without a remedy.

I propose, then, to quiet this class of rights, and to indemnify the parties claiming under written titles; and find that I am not only fortified in this measure by what seems to me an obvious act of justice under the circumstances, but by the policy of Congress in analogous cases. The whole legislation, general and special, of the country, indicates the tender and constant regard which has ever been extended towards settlers, and the liberal provision which Congress has felt to be their due. Hence, from the acquisition of Louisiana and Florida up to the present session of Congress, we find our statute books full of laws for the security of *settlement rights*. It was my anxious desire, and I made an effort, to have a principle inserted in the act of March 3d, 1851, kindred to that contemplated by the bill I now propose to introduce. The importance of the early passage of that act, and the apprehension that the enactment of it might be endangered for want of time if I insisted on this amendment, then induced me to defer the subject for a more suitable opportunity, knowing that my object could be effected in a supplemental bill. The time is now arrived, when it is necessary and of the highest importance to our people that this bill should be passed.

It is plain and explicit in its provisions, which are few and simple. The board have the power finally to confirm these settlement rights, and issue a certificate of confirmation. This is the mode prescribed in the fourth section of the act of Congress, approved March 3d, 1807, entitled "An act respecting claims to land in the Territories of Orleans and Louisiana," by which the commissioners appointed for the purpose of ascertaining the rights of persons claiming land in those Territories had "full power to decide" according to the laws, usages, &c., and for a tract not exceeding a league square; which decision that law declares, "when in favor of the claimant shall be final against the United States, any act of Congress to the contrary notwithstanding:" and the fifth section of that act provides for the granting to a party of "a certificate (*confirmation certificate*) stating the circumstances of the case, and that he was entitled to a patent for a tract of land therein described;" and then, as proposed in the present bill, makes provision for the survey and the subsequent issuing of the patent. But I come now to consider the policy of Congress, and the reasons for it, in dealing with titles analogous to these. In our early legislation, laws were passed for ascertaining and adjusting titles and claims in the former province of Louisiana; and the sixth section of the act of March 3d, 1811, expressly interdicted the offering for sale of any "tract of land" to which a claim had been duly filed according to law for the purpose of investigation, until the final action of Congress thereon. Notwithstanding this, in the progress and rapid growth of the country, many of these claims, which were indefinite in extent or limits, or difficult of identification, were settled upon by our citizens. Sales of portions of them were made by the officers of the Government, settlement claims were confirmed by Congress as donations, and school sections allotted.

Congress, however, in forbidding the sale of lands covered by foreign titles, reserved the right "to do what should seem to itself agreeable to equity and reason on a full and final survey of the whole subject."

A profound jurist of this country, Mr. Legaré, late Attorney General of the United States, has placed our relation to this subject in a most striking point of view. "We all know," he said, 'how impossible it is for the Government to stay, 'or even regulate the eager rush of our people into 'the new lands. It accordingly did, in that case, 'what it has been over and over again constrained 'to do, as against itself by its own preëmption 'laws; it sanctioned what it could not prevent, 'and made compensation to the claimant under a 'treaty with a foreign government, which it could 'no more execute literally than it could its own 'laws with regard to the sale of its domain. I 'say, claims under a treaty—claims against itself 'as a Government—claims which no court has any 'right to enforce, and which bind Congress, only 'in conscience, and bind the other Departments 'only so far as Congress has been pleased to 'acknowledge. For although by referring these 'claims to the decision of a district court, with an 'appeal to the Supreme Court of the United 'States, they are made, to a certain intent, judicial

'questions; yet it is only so far as regards their 'validity as claims, or '*jura ad rem*.' The in- 'quiry, is this a good and valid, or a false and 'groundless claim? is, under these acts, to be 'answered by the courts; but the subsequent 'question, supposing it to be the former, how 'shall it be executed? is one which, under the acts 'of 1824 and 1836, (read together,) Congress has, 'in my opinion, in all cases, within the exception 'referred to above, reserved for its own decision, 'and in regard to which it has decided that the 'execution shall be by an equivalent in land."

And what is the provision which Congress made in this matter in the act of the 26th May, 1824, the first law that was ever passed for the adjudication of foreign titles by the court, being "An act 'enabling the claimants to lands within the limits 'of the State of Missouri and Territory of Arkan- 'sas to institute proceedings to try the validity of 'their claims?" Why, by the eleventh section, it is declared that, "if in any case, it should so 'happen that the lands, tenements, or hereditа- 'ments, decreed to any claimant under the provis- 'ions of this act, shall have been sold by the 'United States, or otherwise disposed of, or if the 'same shall not have been heretofore located; in 'each and every such case it shall and may be 'lawful for the party interested to enter, after the 'same shall have been offered at public sale, the 'like quantity," in other lands.

The justice and constitutionality of this measure necessarily came by appeal in review by the supreme judicial tribunal of the country, and were fully sustained, as we find in the case of Antoine Soulard's heirs *vs.* the United States. (10 Peters's Reports, page 100.) In that case there was a grant in 1796, by the Lieutenant Governor of Upper Louisiana, for a tract of 10,000 arpens, French measure, many years before we acquired the province from the French Republic, and an actual survey of it was made in February, 1804, being prior to the date in which possession, under the treaty of cession, was taken of Upper Louisiana in behalf of the United States.

By these proceedings the title of the sovereign had been diverted in favor of Soulard, and the tract absolutely detached and severed, by actual survey, from the map of the public lands.

Notwithstanding this, the Supreme Court sustained the principle now contended for, in decreeing the claim of the petitioners to the land "to be 'a good and valid title thereto, by the law of na- 'tions, the laws, usages, and customs of Spain, '(under whose Government the title originated,) 'the treaty between France and the United States, 'for the cession of Louisiana, and the stipulations 'thereof," (with which the treaty of Guadalupe Hidalgo is almost identical, in terms, in regard to the security of property,) "as well as the acts of Congress in relation thereto." For we find that the court, in decreeing the title valid in that case, did so, except as to certain parts of the lands surveyed for Soulard, which had been sold by the United States; and the court then further ordered and decreed "that the title of the petitioners to all of said 'land embraced in said concession and survey, 'which has not been sold by the United States, is 'valid by the laws and treaty aforesaid, and is 'hereby confirmed to them, agreeably to the said 'concession and survey." That court, at the same time, in ordering the surveyor general to survey the land, directed him to "certify, on the plats and 'certificates of such survey to be made, what part 'or parts of the original survey of such land had 'been sold by the United States, with the quantity 'thereof;" and further declared the confirmees entitled to take the area of the interfering sales in other lands.

This act of 26th of May, 1824, for the adjustment of claims by the courts, and which was limited to Missouri and the Territory of Arkansas, was, with certain limitations, extended to Florida, by the sixth section of the act of Congress of 23d May, 1828, "supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida," and, since the same act of 1824 was revived and extended to Missouri, Arkansas, Louisiana, and so much of the States of Mississippi and Alabama as is included in the district or country south of the thirty-first degree of north latitude, and between the Mississippi and Perdido rivers.

Thus we see the principle which Congress has deemed proper to lay down in making the courts the instruments of adjudicating foreign titles, and that the correctness of that principle has been fully sustained by the judiciary.

We will now see what course was pursued by Congress in regard to a large and important class of titles in Missouri, which remained unadjusted after the passage of the act of 1824, and before the enactment of the law of 17th June, 1844, and where Congress retained to itself the power finally to confirm or not. By an act, approved 9th July, 1832, "for the final adjustment of private land claims in Missouri," provision was made for the appointment of a board of commissioners for the examination of French and Spanish titles. The second section of that act required the board to lay before the Commissioner of the General Land Office a report, under a certain classification, of the claims so classed, "stating therein the date and 'quantity of each; whether there be any, and what, 'conflicting claims, and the evidence upon which 'each claim depends, and the authority and pow- 'ers under which the said claim was granted by 'the Spanish or French Governor, commandant, 'or sub-delegate, to be laid before Congress for 'their final decision upon the claims contained in 'such first class." A report was accordingly made by the commissioners, on the 27th November, 1833, and communicated to the Senate in January, 1834. In that report the commissioners contemplate a state of things analogous to that for which I now propose making provision. They reported that—

"There are numerous cases of lands lying within the French and Spanish claims, belonging to the individuals whose right or claim originated under the Government of the United States; some depend upon purchasers, some upon the laws allowing preemption; some others upon New Madrid locations; and some, again, upon settlement rights which have been confirmed."

"Most of those persons have been for a long time settled upon their lands. Their claims being of a *bona fide* character, derived from the Government of the United States, they went on to improve their lands, making for themselves and families comfortable homes, without any belief that they would ever be interrupted in their possessions. Should the claims reported by the Board be confirmed by Congress in whole or in part, Congress will, in their wisdom, no doubt, notice the suggestions here made, and carve out such a course as will quiet the uneasiness and anxiety which are felt, by doing everything which even the most scrupulous demands of justice could desire."

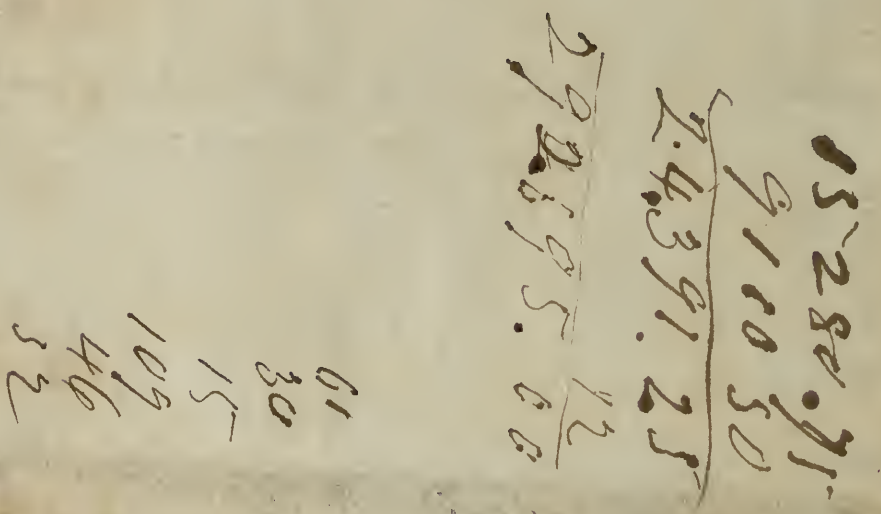
Congress did notice this suggestion, and, in exercising the power and right of final confirmation in the case of the greater portion of the claims then recommended, declared, in the second section of the act of Congress, approved 4th July, 1836, "confirming claims to land in the State of Missouri, and for other purposes," that if it should be found "that any tract or tracts, confirmed as 'aforesaid, or any part thereof, had been previ-'ously located by any other person or persons, 'under any law of the United States, or had been 'surveyed and sold by the United States, this act 'shall confer no title to such lands in opposition to 'the rights acquired by such location or purchase; 'but the individual or individuals, whose claims 'are hereby confirmed, shall be permitted to locate 'so much thereof as interferes with such location 'or purchase" on other public unappropriated lands subject to private sale.

I think I have shown that the principle imbodied in this bill is just, reasonable, and proper, and not at all inconsistent with our treaty obligations; that it is sanctioned by enlightened reason, sound policy, by the most deliberate legislation of Congress and solemn adjudications of the Supreme Court of the United States; and, wherever it has operated, it has been fully acquiesced in as equitable and necessary when applied to the most important and widespread landed interest of the country.

In behalf, then, of the hardy emigrants, of the industrious settlers, I ask of you to protect, by law, their settlements, to secure them in their homes, and, in the name of equity and good conscience, where such settlements are *bona fide* foreign titles, to do justice to that class of my constituents who are the owners of such titles by making them at the same time ample indemnity on other lands.

The bill was read a second time, and referred to the Committee on Public Lands.

Printed at the Congressional Globe Office.



BRIEF DEVELOPING TITLE TO PUBLIC LANDS

FROM

FUNDAMENTAL SOURCES

FILED WITH
CHAIRMAN FEDERAL RELATIONS COMMITTEE
LEGISLATURE OF STATE OF CALIFORNIA

BY
GEORGE EDWARDS
BERKELEY, CAL.

JANUARY, 1913

Gazette Publishing Co., Berkeley, Calif.

Brief Developing Title to Public Lands

By
GEO. EDWARDS,
Berkeley, Cal.

The point to be determined by this brief is whether the United States holds the public lands **AS OWNER, with power in Congress to do what it pleases with them;** or whether the United States holds the lands **AS TRUSTEE and is bound by definite conditions and limitations.** The reader should critically observe the circumstances and the gradual development of the words and phrases, which finally fixed the status of the public lands, in the settlement with Virginia, in the national constitution, and in the ordinance of 1787. The context of the word "property" also should be noted. Congressional citations may be verified and amplified by reference to the proceedings of the Continental Congress, on the dates given. The first portion of this brief contains the substance of the original documents that formed the basis of the holding by the United States of public lands.

SOURCE OF PUBLIC LANDS.

The United States secured control of the public lands by deeds from the original States. These deeds conveyed the western lands. The states refused to convey to the United States, the public lands, included within their recognized boundaries. The long negotiations between Congress and the several states, over the public lands, culminated with the Virginia settlement and established by agreement, **the absolute equality of each new state with the original states.**

New Hampshire, Rhode Island, New York, Pennsylvania, Deleware, Maryland, **within their recognized boundaries,** contained unoccupied former crown lands, or unoccupied proprietary lands, to the title and jurisdiction of which they had succeeded. The treaty of peace with Great Britain confirmed title to the former crown lands.

Pennsylvania paid the Penn heirs for their title. Connecticut had no unoccupied crown lands, within its recognized boundaries; but had extensive claims, based on an original colonial charter, to what were then known as the Wyoming lands, in the territory claimed by Pennsylvania; and to unoccupied land extending west from the western boundary of Pennsylvania to the Mississippi River.

Massachusetts, New York, Virginia, North Carolina, South Carolina, and Georgia, **in addition to considerable areas of unoccupied former crown lands and colonial proprietary lands,** had claims to unoccupied western lands. The claims of Virginia, Maryland, Connecticut, and Massachusetts overlapped in the territory north west of the Ohio river; the lands of North Carolina, South Carolina and Georgia were farther south.

The title to western lands of New York rested on treaties with Indians. The remaining titles rested **on charters by the English crown.** One charter to Virginia conveyed a strip of land 400 miles wide, extending from sea to sea, which was interpreted to mean from the Atlantic to the Pacific. Virginia also had the right **of conquest** of the north west territory. These territorial claims of western lands were indefinite in extent.

ARTICLES OF CONFEDERATION.

The Articles of Confederation placed supreme authority in Congress. The articles contained the clause:

> Article IX. "Provided, also, that **no state shall be deprived of territory for the benefit of the United States,"**

and the long and accrimonious negotiations by Congress with the several original states were to secure amendment of this clause.

Congressional debate; June 22, 1778, "Article IX, after the words "shall be deprived of territory for the benefit of the United States," insert "the United States in Congress assembled shall have the power to appoint commissioners, who shall be authorized and empowered to ascertain and restrict the boundaries of such of the confederated states, which claim to extend to the Mississippi or South Sea" after debate, action was postponed till tomorrow.

June 23, 1778: After the words "for the benefit of the United States" add "provided nevertheless, that all lands within these states, 'the property' of which before the present war was vested in the crown of Great Britain, or out of which revenues for quit rents arise, payable to said crown, shall be claimed, taken and considered, as 'the property' of these United States, and **be disposed of** as "the property" of these United States, and **be disposed of** and appropriated by Congress, for the benefit of the whole confederacy, **reserving, however, to the states within whose limits such crown lands may be, the entire and complete jurisdiction thereof." Passed in negative.**

STATES OPPOSING VIRGINIA; LANDS SHOULD BE FOR THE PEOPLE OF ALL THE STATES.

June 25, 1778, New Jersey claims: The boundaries of the several states should be fixed definitely; wishes to ignore the proprietary rights of some states to the public lands; all vacant and unpatented crown lands **within** and **without** the states **should be disposed of** to defray expense of the war, and for general public purposes; jurisdiction of lands within states should rest with such states, but **"the property"** should be in the United States; states without public lands should not be left to sink under enormous debt, while those claiming public lands, by its sale, can easily be freed from their portion of the public debt.

Jan. 23, 1779: Deleware insists that western lands should be held for the benefit of the United States and **not** for the benefit of states claiming title. Maryland bitterly resents claim of Virginia to western lands and fears the superiority of wealth and power in Virginia by sale of the vast western territory; questions the title of Virginia; intimates that Virginia was considering the erection of a state to the west, to be tributary to Virginia; claims that western lands should be a common **"property," subject to be parcelled out by Congress, into free, convenient** and **independent governments;** instructs delegates not to agree to confederation until terms are satisfactory.

REMONSTRANCE OF VIRGINIA.

Within the western territory claimed by Virginia the Vandalia company had planned to erect a colony: There

were also the Indiana, Illinois and Wabash companies claiming title from the Indians. They sought confirmation of title from Congress. The aggression of these companies and the demands of Maryland were met by Virginia by a Remonstrance, passed December 14, 1779, by the General Assembly of Virginia, and presented to Congress: Advising that Virginia had passed a law to prevent settlements within her territory, but desired to promote harmony and confidence between the states; is astonished that Congress has receivel and contenanced petitions to erect separate governments from the Vandalia and Indiana companies, in defiance of the authority, laws asd jurisdiction of Virginia; if Congress should arrogate to themselves a right of adjudication, unwarranted by and expressly contrary to the fundamental principles of the Confederation, superseding or controlling the internal policy, civil regulations and municipal laws of Virginia, or any state, it would be a violation of public faith and of the sovereignty of such state. The United States hold no territory but in right of some one individiual state, whose boundaries are fixed by charters. When Virginia acceded to union, her sovereignty and jurisdiction, within her own territory, were reserved and secured to her, and can not be altered or infringed without her consent. Virginia has already freely offered to Congress, without cost, lands as bounties to troops on Continental establishment, subject to distribution by Congress, and the offer still holds. But Virginia does remonstrate and protest against any jurisdiction or right of adjudication of Congress, upon the petition of the Vandalia and Indiana companies, or on

any other matter or thing subversive of the internal policy, civil government, or sovereignty of Virginia or of any state.

VIRGINIA ASKED TO RECONSIDER OPENING LAND OFFICE.

October, 30, 1779, Congress recommended, that as it appeared that the opening of a land office in Virginia, for the purpose of locating land, unappropriated at the time of independence, has produced much uneasiness, disputes and controversy, and greatly weakened the United States by the emigration of inhabitants to parts remote from defense; therefore it is earnestly recommended to Virginia to reconsider opening of the land office; and it is recommended to Virginia and all other states in like circumstances, to forbear selling or issuing warrants for such unappropriated lands, or granting the same during the present war.

NEW YORK READY TO CONVEY.

April 1, 1780, New York authorized Congress to define the western boundaries of New York; declared that New York was ready to cede or relinquish her public lands, either with the jurisdiction and right of preemption of the soil, or the right of preemption only, **for the use and benefit of such of the United States, as shall become members of the federal alliance, and for no other use or purpose whatever. Said lands shall be disposed of in such manner only as Congress shall direct.**

CONGRESS EVADES CONTROVERSY AND RECOMMENDS TRANSFER.

September 6, 1780, Congress considered the instructions of Maryland regarding the Articles of Confedera-

tion; also act of New York, on same subject; also remonstrance of Virginia. Congress decided that it was unnecessary to examine into the merits or policy of the general assembly of Maryland; or of the remonstrance of Virginia. They involved questions that were declined on mature consideration, when the Articles of Confederation were debated. Nor could such questions he revived with any prospect of conciliation. It appears more advisable to press on the states, which can remove the embarrassments respecting the western country, a liberal surrender of a portion of their territorial claims, since they cannot be preserved entire, without endangering the stability of the general confederacy; to remind them how indispensably necessary it is to establish the federal union on a fixed and permanent basis; how essential to public credit and confidence to support our army, to the vigor of our councils and success of our measures; to our tranquility at home, and our reputation abroad; to our existence as a free, sovereign and independent people, Congress asks the respective legislatures to give a full and impartial consideration to the subject; especially in view of the act of New York which is calculated to accelerate the federal alliance, by removing, as far as depends on that state, the impediment arising from the western country. That this report be transmitted to the legislatures of the several states with the earnest recommendation that the states, claiming western territory, pass such laws and give their delegates in Congress such powers, as may effectually remove the only obstacle to a final ratification of the Articles of Confederation.

CONGRESS OFFERS TO ACCEPT LANDS UNDER DEFINITE CONDITIONS.

October 10, 1780, Congress resolved that the lands which may be ceded to the United States by any particular state, pursuant to recommendation of September 6, 1780,

> **shall be disposed of for the common benefit of the United States: and be settled and formed into distinct republican states, which shall become members of the federal union, and have the SAME rights to sovereignty, freedom and independence, as the other states. That the reasonable war expenses of any state, shall be reimbursed. That the said lands shall be granted or settled at such times and under such regulations as shall hereafter be agreed upon by the United States in Congress assembled, or any nine or more of them.**

COUNTER TENDER OF VIRGINIA.

The general Assembly of Virginia, January 2, 1781, as the safety, strength and happiness of United States depended on ratification of Articles of Confederation, resolved to cede to United States all right, title and claim to the lands North West of the Ohio river, conditioned: 1st: **That the territory ceded shall be laid out into suitable states; that the states so formed shall be distinct republican states and be admitted members of the Union, having the SAME sovereignty, freedom and independence as the other states.** 2d: That Virginia be fully reimbursed expense of conquest North West of Ohio. 3d: That the settlers who have professed themselves citizens of Virginia shall have their titles confirmed and be given military protection. 4th: That Col. Clark who conquered the territory be given for self and troops 150,000 acres. 5th: That, if lands South East of

Ohio reserved for troops of Virginia are insufficient, then good land to North West be added to supply deficiency. 6th: **That all the lands,** not so reserved **shall be considered a common fund for the benefit of the United States, and shall be faithfully and bona fide disposed of for that purpose and for no other use or purpose whatever.** 7th: That all purchases or deeds from Indians to private persons be declared void. 8th: That all the remaining territory of Virginia between Atlantic and the South East side Ohio be guaranteed to Virginia by United States. That this cession of Virginia shall be void unless all the states ratify the Articles of Confederation and all other states shall also cede their claims to United States.

MARYLAND OPPOSES VIRGINIA.

February 12, 1781, Maryland, which held no charter to western lands, authorized delegates to subscribe to Article of Confederation, but declined to relinquish any right she might have with the other United States in the back country; but claimed the same as fully as ever, relying on the justice of the several states; declared that no article in the confederation can or ought to bind this or any other state, to guarantee any extensive claim of any particular state to the soil of said back lands, or any such claim of jurisdiction over said lands, or inhabitants thereof.

DEED OF NEW YORK.

March 1st, 1781, New York delegates preparing to deed western lands to United States, declared that in view of condition set up by the legislature of Virginia

that the United States should guarantee her bounderies, New York delegates also would require the United States to guarantee bounderies of New York with power otherwise in people of New York to ratify or disapprove of conveyance. Thereupon they conveyed title of New York to western lands to United States, and cede, transfere and forever relinquish to and for the only use and benefit of such of the states as are or shall become parties to the Articles of Confederation, all right, title, interest, jurisdiction and claim to said lands; **to be granted, disposed of and appropriated, in such manner only as Congress shall direct.**

VIRGINIA ASSERTS HER RIGHTS.

October 16, 1781, the delegates of Virginia, as committee of Congress was disposed to investigate claims of the United Illinois and Wabash Companies, of the Indiana Company, as well as claims of certain individuals to western lands, therefore the said delegates of Virginia holding that no claim ought to be received adverse to Virginia, or any state; because if the lands, to which pretensions are made, lie within the limits of such state, by its authority alone can the merits of their claim be enforced, the jurisdicion of Congress in territorial questions, being limited to an adjustment of the conflicting claims of different states. If the lands claimed lie within Virginia, or any state, Congress are interdicted from cognizance. Therefore Virginia requested a vote on the question: Whether it was the intention of Congress to authorize the committee to receive claims and hear evidence in behalf of said companies, adverse to the

claims of Virginia, New York or Connecticut. Vote on previous question and lost.

VIRGINIA REQUESTS REPORT OF COMMITTEE ON LANDS. COMMITTEE ADVISES REJECTION OF TERMS OF VIRGINIA.

May 1st, 1782, Virginia called for report of committee on the cessions of New York, Virginia, and Connecticut; and on the petitions of the Indiana, Vandalia, Illinois and Wabash companies. Accordingly, the committee reported that New York and Connecticut had laid before the committee their several claims to lands, within their states: that Virginia declined any elucidation of her claim, either to the lands ceded in the act referred to committee, or the lands requested to be guaranteed to Virginia by Congress: but delivered to the committee the written paper annexed.

Having examined all information, the committee recommended:

> That Congress accept cession of New York, 1st as it appeared that all the land of the Six Nations of Indians had been placed by these tribes under the protection of England, with jurisdiction resting in New York. 2d: That New York had supported said Six Nations with blood and treasure for 100 years. 3d: That England always treated the territory of the Six Nations as appendant to New York. 4th: That Massachusetts, Pennsylvania, Maryland and Virginia have by their public acts recognized the Six Nations as appendant to New York. 5th: That United States will be vested with the jurisdiction of this whole western territory, by accepting the cession.
>
> That Congress earnestly recommend to Massachusetts and Connecticut to release, without delay to United States, all claims and pretentions to the

western territory, without any conditions or restrictions whatever.

That Congress cannot accept the cession proposed by Virginia, consistently with the interests and sovereignty of the United States and the duty they owe to their constituents; for the following reasons: 1st: It appears to the committee that all the lands claimed by Virginia are within the claims of Massachusetts, Connecticut and New York, as part of the lands of the Six Nations. 2nd: A great part of the lands claimed by Virginia and requested to be guaranteed by Congress, is also within claims of New York. 3d: A large part of these lands are west of the boundary of Virginia, as established by Great Britain. 4th: That a large tract of said land had been legally sold, under the government of Great Britain, before the declaration of independence, by persons claiming title. 5th: In 1763, a large part of this territory was separated and appointed as a distinct government and colony by Great Britain, with the knowledge and approval of Virginia. 6th: The conditions annexed to the cession of Virginia are incompatible with the honor, interest and peace of United States, and are therefore inadmissible.

That it is earnestly recommended to Virginia to reconsider their act of cession and by a proper act cede to United States all claims and pretensions to the western lands, **free from any conditions or restrictions whatever.**

As to Indiana, Vandalia, Illinois and Wabash companies, during the hearing of these claims Virginia delegates refused to attend hearing. Committee believes purchases of Indiana company were bona fide, for a valuable consideration, according to transactions with Indians. Therefore, it should be confirmed, provided that jurisdiction be given to United States. It further appears that Vandalia was promoted at great expense by subjects of Great Britain, who were enemies of United States, as well as by citizens of the United States. The extensive

territory was to be erected into a colony. But it is incompatible with the interests, government and policy of the United States to permit such extravagant grants to individual citizens. It, therefore, is recommended that the United States reimburse the expense of all, who are citizens of the United States, provided that all claims to said land are released to the United States, payment to be made by grants to each member individually.

It is recommended that the petition of the Illinois and Wabash companies be denied as being irregular in dealing with Indians; are indefinite in extent; that the Wabash purchase was made after Congress had appointed an agent for Indian affairs; that the Six Nations claim the land, in opposition to the Indians granting it.

It is recommended that Congress declare that it alone has power to deal with, or purchase land from Indians, outside the bounds of the several states. That no citizen of the United States, or of any state should purchase unappropriated lands from the Indians.

It is recommended that Congress permit new settlements, on unappropriated lands to be erected into a new state, which shall make good all reasonable engagements to the officers and sildiers of the United States: That the bona fide settlers shall be confirmed in their titles, when a new state is erected.

It is recommended that Congress agree to reimburse to each state all reasonable expense of war.

It is recommended that Congress shall assert no "property" in the soil, against the Indians, except by regular purchase and treaty.

RECOMMENDATIONS NOT APPROVED.

This detailed report of the committee on the western lands was **not** approved by Congress.

LANDS TO PAY PUBLIC DEBT.

September 6, 1782, Congress adopted the following resolutions: If states claiming **"exclusive property"** in

the western lands will make cessions to United States agreeable to the recommendations of Congress September 6th and October 10th, 1780, **it would be an important fund for the discharge of the national debt.** That the cessions of states, conforming to these recommendations be accepted. That the states, making cessions, not conforming to these recommendations, be recommended to reconsider and re-submit them to Congress. If this recommendation is complied with, Congress will not interfere with the determinations of particular states, regarding private property in lands within those cessions.

ATTACK ON VIRGINIA RENEWED.

September 13th, 1783, Congress resumed consideration of the Virginia cession. Attack on claims of Virginia to western lands was renewed and it was moved that the bounderies of the several states be determined; that the vast territory outside these limits to the west were subject to no just claim of any state and **should be considered as a common "property," subject to be parcelled out by Congress into free, convenient and independent governments at such times as Congress shall direct:** and that as Maryland declared she did not intend to relinquish any right or interest in the western territory, as her membership in the general confederacy established her rights to the western lands, and that no state can, or ought to, exercise any sovereignty, legislation or jurisdiction there: that the sovereignty had rested in Great Britain and this had been transferred to the United States by the treaty of peace. On vote, consideration was postponed.

AMENDED REPORT OF COMMITTEE ON VIRGINIA'S TENDER; AS APPROVED.

Thereupon, **the original report,** as amended, was taken up for consideration by Congress, covering the tender of Virginia, by her legislatures of January 2nd, 1781.

The report sets up in full the offer of Virginia and the committee are of the opinion that the 1st requirement that **the territory should be laid out into distinct republican states, having the SAME rights of sovereignty, freedom and independence as the other states was provided for in the tender by Congress October 10th, 1780:** That the 2d condition of Virginia that she be reimbursed her war expenses in conquering the western territory, should be met, in addition to the guarantees of the congressional act October 10, 1780, by the selection of commissioners to adjust details: That the 3d condition requiring the confirmation of the possession and titles of settlers be approved: That the 4th, 5th and 6th conditions of Virginia, (4th provision for the Virginia troops that conquered that territory; 5th, allowing additional lands to regular troops, of Virginia, if the land South East of Ohio proved insufficient; 6th, that **all the remaining land should be considered a common fund for the use and benefit of such of the United American States, as have become or shall become members of the confederation, and should be faithfully and bona fide disposed of for that purpose, and for no other use or purpose whatever,) were reasonable and should be agreed to by Congress;** as to the 7th condition of Virginia, that all purchases and deeds from Indians made for the benefit of private persons should be declared void, as in conflict with the charter rights of Virginia, the committee advised that it would be improper for Congress to declare these purchases absolutely void and that the 6th condition, as agreed to regarding the disposition of

lands was sufficient; as to the last condition of Virginia, requiring Congress to guarantee to Virginia the remainder of her territory, it had been policy of Congress to avoid going into conflicting claims between different states and to ask such a guarantee was either unnecessary or unreasonable.

The committee viewing the whole matter between Virginia and the United States, recommended that, **if Virginia make a cession conforming to this report that it be accepted.**

On vote, this report was **approved** by Congress.

A NEW STATE.

October 14, 1783, report to Congress by committee on Indian affairs was adopted as follows: Whether it was not wise and necessary to erect in the western territory a distinct government as well as to do justice to the army of the United States, who were entitled to lands as bounty; also to accommodate purchasers and settlers, and that a plan for temporary government be devised, until the inhabitants were able to form a permanent constitution, as citizens of **a free sovereign and independent state;** provided said constitution **shall not be incompatible with republican principles, which are the basis of the constitution of the republican states of the union.**

THE DEED OF VIRGINIA.

March 1st, 1784, moved in Congress that the following deed of Virginia be accepted:

To all who shall see these presents, we Thomas Jefferson, Samuel Hardy, Arthur Lee and James Monroe, the underwritten delegates for the commonwealth of Virginia, in the Congress of the United States of America, send greeting:

Whereas, the general assembly of the commonwealth of Virginia, at their session begun on the 20th day of October, 1783, passed an act entitled "an act to authorize the delegates of this state in Congress, to convey to the United States, in Congress assembled, all the right of this commonwealth, to the territory north west of the river Ohio," in these words following, to wit:

"Whereas the Congress of the United States did, **by their act of the 6th day of September in the year 1780,** recommend to the several states in the union having claims to waste and unappropriated lands in the western country, **a liberal cession to the Unitel States,** of a portion of their respective claims, **for the benefit of the union;** and whereas this commonwealth did, **on the 2d day of January, in the year 1781,** yield to the Congress of the United States, for the benefit of the said states, all right, title and claim, which the said commonwealth had to the territory to the northwest of the Ohio, **subject to the conditions annexed to the said act of cession.** And whereas the United States, in Congress assembled, have, **by their act of the 13th of September last, stipulated the terms on which they agree to accept the cession of this state,** should the legislature approve thereof, which terms, although they do not come fully up to the propositions of this commonwealth, are conceived on the whole, to approach so nearly to them, as to induce the state to accept thereof, in full confidence, that Congress will in justice to this state, for the liberal cession she hath made, earnestly press on the other states, claiming large tracts of the waste and uncultivated territory, the propriety of making cessions equally liberal, **for the common benefit and support of the union.** Be it enacted by the general assembly, that it shall and may be lawful for the delegates of this state to the Congress of the United States, or such of them as shall be assembled in Congress, and the said delegates, or such of them so assembled, are fully authorized

and empowered, for and in behalf of this state, by proper deeds or instruments in writing, under their hands and seals to convey, transfer, and assign and make over unto the United States in Congress assembled, for the benefit of the said states, all right, title and claim, as well in soil as jurisdiction, which this commonwealth hath to the territory or tract of country, within the limits of the Virginia charter, situate, lying and being to the north west of the river Ohio, subject to the terms and conditions in the before re-cited act of the 13th day of September last; that is to say, **upon the condition that the territory so ceded shall be laid out and formed into states,** containing a suitable extent of territory, not less than 100, nor more than 150 miles square, or as near thereto as circumstances will admit, and **that the states so formed shall be distinct republican states, and admitted members of the Federal union; having the SAME rights of sovereignty, freedom and independence as the other states.** That the necessary and reasonble expense of this state, in subduing any British posts, or in maintaining forts and garrisons within and for the defense, or in acquiring any part of the territory, so ceded, or relinquished, shall be fully reimbursed by he United States; and that one commissioner shall be appointed by Congress, one by this commonwealth and another by these two commissioners, who, or a majority of them, shall be authorized and empowered to adjust and liquidate the account of the necessary and reasonable expenses incurred by this state, which they shall judge to be comprised within the intent and meaning **of the act of Congress, of the 10th of October, 1780,** respecting such expenses. That the French and Canadian inhabitants and other settlers of the Kaskashies, St. Vincents and the neighboring villages, who have proffered themselves citizens of Virginia, shall have their possessions and titles confirmed to them, and be protected in the enjoyment of their rights and liberties. That a quantity not

exceeding 150,000 acres of land promised by this state, shall be allowed and granted to the then Colonel, now General G. R. Clarke and to the officers and soldiers of his regiment, who marched with him when the posts of Kaskaskiers and St. Vincents were reduced, and to the officers and soldiers that have since been incorporated into said regiment, to be laid off in one tract, the length of which not to exceed double the breath, in such place on the north west side of the Ohio, as a majority of the officers shall choose, and to be afterwards divided among the said officers and soldiers in due proportion, according to the laws of Virginia. That in case the good lands on the southeast side of the Ohio, upon the waters of the Cumberland river, and between the Green river and Tennessee river, which have been reserved for the Virginia troops upon continental establishment, should, from the N. Carolina line, bearing in further upon the Cumberland lands than was expected, prove insufficient for their legal bounties, the deficiency should be made up to the said troops, in good lands, to be laid off between the rivers Scioto and the Little Miami, on the north west side of the river Ohio, in such proportions as have been engaged to them by the laws of Virginia. That **all the lands within the territory so ceded to the United States,** and not reserved for or appropriated to any of the before mentioned purposes, or, disposed of in bounties to the officers and soldiers of the American army, **shall be considered as a common fund for the benefit of such of the United States, as have become or shall become members if the confederation,** or federal alliance of the said states, Virginia, inclusive, according to their usual respective proportions in the general charge and expenditure, and **shall be faithfully and bona fide disposed of for that purpose and for no other other use or purpose whatever.** Provided that the trust hereby reposed in the delegates of this state, shall not be executed, unless three of them at least are present in Congress.

And whereas the said general assembly by their resolution of June 6th, 1783, had constituted and appointed us, the said Thomas Jefferson, Samuel Hardy, Arthur Lee and James Monroe, delegates to represent the said commonwealth in Congress for one year, from the first Monday in November, then next following, which resolution remains in full force: Now therefore know ye, that we, the said Thomas Jefferson, Samuel Hardy, Arthur Lee, and James Monroe, by virtue of the power committed to us by the act of the said general assembly of Virginia, before recited, and in the name and for and in behalf of the said commonwealth, do by these presents **convey, transfer and assign and make over unto the United States,** in Congress assembled, **for the benefit of the said states, Virginia inclusive, all right, title and claim, as well of soil as of jurisdiction,** which the said commonwealth hath to the territory, or tract of country, within the limits of the Virginia charter, situate, lying and being to the northwest of the river Ohio **to and for the uses and purposes and on the conditions of the said recited act.** In testimony hereof, we have hereunto subscribed our names and affixed our seals, in Congress the.....of..... in the year of our Lord, 1784, and of the independence of the United States, the eighth.

VIRGINIA'S DEED SIGNED, SEALED, DELIVERED AND ACCEPTED.

Congress thereupon; **Resolved that the United States in Congress assembled are ready to receive this deed,** whenever the delegates of Virginia are ready to execute the same. Passed by vote in affirmative.

The delegates of Virginia then proceeded and **signed, sealed and delivered the said deed.** Whereupon Congress adopted the following resolution: That delegates

of the commonwealth of Virginia, having executed the deed; **Resolved that the same be recorded and enrolled among the acts of the United States in Congress assembled.**

STATUS OF PUBLIC LAND SETTLED.

The transfer of the Virginia western lands ended the long, bitter and dangerous controversy over the public lands, which nearly destroyed the Union. A number of deeds, from other states, will be noted in cronological order, but they followed as a result of this settlement with Virginia. From the date of this transfer, up to five or six years ago, Congress has been controlled by this agreement. And Congress on receiving this deed at once developed plans to make all needful rules and regulations for faithfully and bona fide disposing of the public territory, in harmony with the rights of the United States, **to retain the profit of sale,** and the rights of the particular future states; **that the lands would be erected into states, that should be republican and on a perfect equality with the original states in sovereignty, freedom and independence, and for no other use or purpose whatever.**

A DEFINITE CONTRACT MADE.

It is to be noted carefully that this transaction between Virginia and the United States **has all the elements of a definite contract.** After years of negotiations, Congress, September 6th, and October 10, 1780, made a tender to the states, Virginia included. On January 2d, 1781, the legislature of Virginia made a counter tender of the terms on which she should cede her lands. On May 1st, 1782, the committee of Congress recom-

mended that the tender of Virginia be rejected and that Congress ask Virginia to make the transfer free from all conditions and limitations, which Congress refused to do. On September 13th, 1783, Congress made a modified tender to Virginia. And March 1st, 1784, Virginia, waiving minor details, accepted the terms of Congress and transferred the consideration, her lands, which Congress formally accepted in behalf of the United States. This contract as a definite binding agreement, is the substance out of which the present national constitution was fashioned, for a union of equal states; it is the foundation on which our nation has been built.

OWNERSHIP OF SOIL AND SOVEREIGNTY INSEPERABLE.

The fundamental thought which controlled these long negotiations was that, **in order to erect sovereign states the ownership of the soil must pass from the United States to the new state. When the ownership of the soil,** covering an extensive area, **rests permanently in a sovereign power, the full political sovereignty will, by irresistable sequence, finally rest there also.** It would have been an invasion of the sovereignty of the original states to allow the United States to acquire the public lands, within their recognized boundaries; accordingly Congress rejected the proposal when made June 23, and June 25, 1778, and January 23rd, 1779.

EQUALITY OF STATES.

The making of this contract with Virginia, definitely established the equality of each new state, with the original states. The perfect equality of the states rests on the transfer of the public lands to the United States;

and their transfer by the United States to the jurisdiction, taxing power, eminent domain and sovereignty of the states where they lie.

ORDINANCE OF 1784.

During the month following receipt of the deed of Virginia, Congress commenced the work of outlining rules and regulations for bona fide disposing of the public lands, April 20 and 21, 1784, and erecting states on them. And April 23rd, 1784, the **first** ordinance relating to the western territory, formulated by Mr. Jefferson of Virginia, was adoped: **The land should be offered for sale and divided into distinct states;** the settlers should erect a temporary government, taking the constitution and laws of one of the original states; when 20,000 inhabitants are reached, they may erect a permanent government; these governments must be; 1st, permanent members of the United States; 2d, shall be subject to the Articles of Confederation in the same manner as the original states and to the acts and ordinances of the United States; 3d, **shall in no case interfere with the primary disposal of the soil by the United States, nor with the ordinances and regulations which Congress may find necessary for securing title to bona fide purchasers;** 4th, shall bear their share of the public debt; 5th, **no tax shall be imposed on lands, "the property" of the United States; governments shall be republican;** 7th, lands of non-resident proprietors shall not be taxed higher than those of residents, before admission to United States; when population is equal to the smallest original states, shall be admitted to Union, **on equal**

footing with the original states; while under temporary government, shall keep a member in Congress, with right of debating, but no vote.

COMPACT A FUNDAMENTAL CONSTITUTION

These preceeding articles shall be formed into a charter of compact; shall be duly executed by the president of the United States in Congress assembled, under his hand and the seal of the United States; **shall be promulgated;** and **shall stand as fundamental constitutions between the thirteen original states and each of the new states now newly described, unalterable, from** the date of the sale of any part of the territory of such state, pursuant to this resolve, **but by the joint consent of the United States in Congress assembled and of the particular state within which such alteration is propsed to be made.**

PLANNING SURVEYS.

May 28, 1784, Congress considered a detailed plan, of its rules and regulations for disposing of the public lands, going into surveys and the offices necessary to mark out the lands and conduct sales. On vote this plan was defeated. These details occupied a large amount of time in Congress during April, May and June, 1785, also during May and June, 1786, and were brought to a working basis.

DEEDS OF MASSACHUSETTS AND CONNECTICUT.

April 19th, 1785, Congress accepted the deed of Massachusettes of a strip 70 or 80 miles wide extending to the Mississippi river. This deed was conditioned by the limitations that the lands were,

> **"to be disposed of for the common benefit of the United States," "agreeably to a resolve of Congress of October 10, 1780,"** and conveyed both soil and jurisdiction.

May 20, 1785, Congress debated a method of disposing of western lands; also invited North Carolina to deed her lands, which lay south of the Virginia lands. May 25, 1786, Congress debated getting claim of Connecticut in Virginia territory. July 7th, 1786, Congress asked **Virginia to consent** to five states being erected in western territory, instead of three.

September 14, 1786, Connecticut made her first deed to Congress of her western lands; and April 28, 1800, deeded to Congress her jurisdiction within the "Western Reserve." The deeds of Connecticut were free from all limitations and conditions.

AMENDMENT OF CONSTITUTION.

The articles of confederation provided for amendment as follows:

> Article XIII. The Articles of this Confederation shall be insoluably observed by every state, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them; **unless such alteration be agreed to in a Congress of the United States,** and be afterwards confirmed by the signitures of every state.

The Articles of Confederation being found defective, Virginia took the lead in urging on the United States a convention to amend the constitution. Congress yielding to strong pressure, issued a call February 21, 1787, for a constitutional convention, which met in Philadelphia, May 14, 1787, and opened for business May 28th,

1787. Congress also was in session in Philadelphia at the same time, and prominent men were members of both bodies.

ORDINANCE OF 1787.

July 13th, 1787, Congress finding that the ordinance of April 23, 1784, which was the first general body of rules and regulations necessary for bona fide disposing of the public lands, required amendment, repealed the original ordinance and adopted the famous ordinance of 1787, which ever after remained the fundamental charter for the government of territories and the erection of new states. This ordinance consisted of two parts: The first part related to the transient organization of the territory. The second part was intended to last as long as the United States should last, being a declaration of fundamental principles. It provided for a temporary government; for the descent of property; the appointing of officers by Congress; provision for temporary laws; the organization of a legislature; subdivision into counties and townships; election of a delegate to Congress.

The second part of the ordinance of 1787 provided: For extending the fundamental principles of civil and religious liberty; to fix and establish those principles as the basis of all laws, constitutions and governments, which forever hereafter shall be found in the said territory; to provide for establishing permanent governments and for their admission to a share in the federal councils on an equal footing with the original states;

CONSENT OF STATES REQUIRED FOR ALTERATIONS.

that it is hereby ordained and declared that the following articles shall be considered as articles of compact between the original states, and the people and states of the said territory, and forever remain unalterable, unless by common consent. Article 1st, religious freedom; Article 2d, benefit of habeas corpus, representation in legislature, right of bail except for capital offense, no cruel or unusual punishment, no man deprived of liberty but by judgment of his peers or the law of the land, compensation for person and property taken for public purpose, contracts shall be maintained; Article 3d, religion, morality and schools shall be encouraged, good faith to Indians; Article 4th, **the said territory and states organized out of them shall forever remain a part of the United States,** the inhabitants shall pay their proportion of the federal debt, which shall be by taxes levied by their legislatures;

PRIMARY DISPOSAL OF SOIL IN UNITED STATES.

that the **legislatures of those districts shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the titles in such soil to bona fide purchasers,** no tax shall be imposed on the lands **"the property"** of the United States, in no case shall non-resident proprietors be taxed higher than residents;

CONTROL OF NAVIGABLE STREAMS

that the navigable waters leading into the Mississippi and St. Lawrence shall be common highways and for-

ever free both to the inhabitants of the territory and of the United States and of the states that may be admitted to the Union.

FORMATION OF NEW STATES.

Article 5th. There shall be formed in said territory not less than three nor more than five states, the boundaries to be defined as soon as Virginia shall alter her act of cession and consent thereto; **said states shall be admitted to the Union on an equal footing in all respects whatever** and shall be at liberty to form a permanent constitution and state government, provided the constitution and government as formed **shall be republican.** Article 6th. There shall be no slavery, but slaves escaping from an original state may be reclaimed.

CONSTITUTIONAL CONVENTION.

From May 28, to September 30, 1787, the constitutional convention continued its deliberations, covering the same interval during which Congress had debated and adopted the ordinance of July 13th, 1787. Virginia submitted an outline for remodeling the constitution and this was the foundation that was built upon, in the convention. June 5th, 1787, in convention was considered the proposition "for guaranteeing to states republican government, and territory," but was postponed. The territory referred to being primarily the territory within the recognized boundaries of the original states. The delegates were mainly engrossed with the many difficulties that had arisen between the original states. June 11, 1787, the convention again considered the

above and amended to "that a Republican constitution and its existing laws ought to be guaranteed to each state of the United States." On July 11th, 1787, Randolph of Virginia in convention declared that **"Congress had pledged the public faith to the new states, that they shall be admitted on equal terms.** They never would or ought to accede on any other." This declaration met with no dissent whatever in the convention. July 26th, 1787, Mr. Pickney disliked the exclusion of the public debtors. It went too far. It would exclude persons who should purchase western territory and might be an obstacle **to the sale of the latter.**

DEVELOPMENT OF CLAUSE RELATING TO PUBLIC LANDS.

August 18th, 1787, Mr. Madison of Virginia submitted for the committee of detail, the following powers as proper to be added to those of the general legislature:

> **"To dispose of the unappropriated lands of the United States." "To institute temporary governments for new states arising therein,"**

This was referred unanimously to the committee of detail. August 30, 1787, Mr. Carrol moved that:

> **"Nothing in this constitution shall be construed to alter the claims of the United States or of the individual states to the western territory,** but all such claims be examined into and decided upon by the Supreme Court of the United States."

Mr. Morris moved to postpone this in order to take up the following:

> **"The Legislature shall have power to dispose of and make all needful rules and regulations respecting the territory and other property belonging to**

the United States; and nothing in this constitution contained, shall be so construed as to prejudice any claims of the United States or of any particular state."

On vote this construction was agreed to in the convention, Maryland alone voting in negative.

CONSTITUTION SUBMITTED TO CONGRESS.

The new, or present, constitution was completed by the convention and **submitted September 20, 1787, to Congress for approval.** Amendments were proposed in Congress but voted down by Virginia and the great majority,and September 28, 1787, Congress submitted the constitution to the legislatures of the several states for adoption.

DEED OF SOUTH CAROLINA.

South Carolina, August 9th, 1787, deeded to Congress her strip of land 12 to 14 miles wide, extending to the Mississippi river. The deed conveyed both soil and jurisdiction and was free from all limitations or conditions.

ORDINANCE 1787 REAFFIRMED.

The ordinance, July 13th, 1787, containing the fundamental rules and regulations for bona fide disposing of the western territory, required that the officers for temporary government should be appointed by Congress. The new constitution required that they should be nominated by the President and approved by the Senate. **Accordingly, August 7, 1789, after the new constitution was adopted,** Congress amended this ordinance in this

respect, **and re-enacted it, thus completely harmonizing and unifying all that had been done regarding the public lands, by the several states, by Congress, and by the constitutional convention, making it one coherent transaction.**

DEED OF NORTH CAROLINA.

After the present constitution was adopted, North Carolina, February 25, 1790, presented her deed to Congress comprising the lands, from which the State of Tennessee was created. The deed recited that as Congress had urged cession of territory to extinguish debts and estblish harmony, therefore North Carolina conveyed lands to United States. The deed provided:

> **All lands ceded** and not apportioned in bounty to soldiers, **shall be considered as a common fund for the use and benefit of United States, (N. Carolina inclusive) and shall be faithfully disposed of for that purpose and for no other use or purpose whatever. The territory so ceded shall be laid out and formed into a state or states, with all the benefits to its inhabitants, set forth in ordinance of 1787.**

DEED OF GEORGIA.

Georgia was the last of the seven states, which ceded western territory. April 24th, 1802, Georgia ceded to United States the territory, extending westward from her present boundary to the Mississippi river, excepting the small claim of South Carolina on the north. The deed conveyed both soil and jurisdiction, conditioned that United States pay Georgia $1,250,000 to cover her expenses. That a land office should be opened for sale of the lands within twelve months.

All lands ceded shall be considered as a common fund for the use and benefit of United States (Georgia inclusive) and shall be faithfully disposed of for that purpose and for no other use or purpose whatever. This territory shall be formed into a state and admitted to the Union, **on the same conditions and restrictions and with the same privileges, as is provided in the ordinance of July 13th, 1787, excepting as to slavery.**

It should be noted that of all the states making deeds to the United States to the western territory, Connecticut and South Carolina alone, conveyed without limitations and conditions.

The foregoing contains the substance of all transactions establishing the status of the public lands. We now turn to consider the logical deductions from the above premises.

THE WORD "PROPERTY."

The most critical study should be given to the use of the word "**property**", as found in the Constitution and quoted below; its relation to the surrounding context; and its relatioon to the entire transaction by which the United States secured control of the public lands, by which the permanent status of the public lands was fixed. Upon the interpretation of this word, Kansas v. Colorado, 206 U. S. 88-89, 1907, **the U. S. Supremt Court rests its theory concerning the public lands and on this interpretation is based the theory of the permasent vast reserves** which in California alone, exceed in area the combined territory of New Hampshire, Vermont, Massachusetts, Connecticut, Rhode

Island, New Jersey and Maryland; and which in all the states exceed the area of France or of Germany.

The court, in this case, recites the clause in the national constitution relating to the public lands:

> "The Congress shall have power to dispose of and make all needful rules and regulations, respecting the territory and other property, belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state."
>
> The court then declares: "The full scope of this paragraph has never been definitely determined. Primarily, at least it is a grant of power to the United States of control over its property. That is implied by the words 'territory and other property.'"

It will be seen that the word **"property" is used in precisely the same sense in the ordinance of April 23, 1784,** "No tax shall be imposed on lands **'the property'** of the United States;" **in the ordinance of July 13th, 1787,** "No tax shall be imposed on lands **'the property'** of the United States;" and **in the national constitution** "the territory and other **'property'** belonging to the United States." Following the usage thus established, the public lands were at once called the lands of the United States, and continued to be so called for sixty years.

POLLARDS LESSEE v. HAGON.

In 1845, a case, Pollards Lessee v. Hagon, 3 How. 212, came before the United States Supreme Court, and resulted in a luminous decision, disclosing a comprehensive knowledge on the part of the court of the transaction by which the United States secured control of the

public lands and by which the perfect equality of the states was established. The court declared that the transaction between the United States and Virginia and Georgia and the Louisiana Purchase **constituted a contract and created a trust, under which the United States secured control of the public lands to pay the public debts, by bona fide disposing of them in order that new states might be erected which should be equal in every respect to the original states; that the United States holds the public lands for temporary purposes only and in trust for the states where they lie;**

STATES NOT EQUAL UNTIL LANDS TRANSFERRED.

that until the lands were disposed of by the United States, the new state was not on a footing of equality with the original states;

TIDE LANDS.

as the original states owned the tide lands, within their borders, each new state becomes owner of its tide lands as soon as it enters the Union, because **the new state is on an equality with the original states in every respect whatever;**

CLAUSE TRANSFERRING LANDS TO UNITED STATES.

as to the conditions inserted in the acts admitting new states to the Union, that these states "disclaim all right and title to the waste and unappropriated lands lying wihin said territory; and that the same shall remain at the sole and entire disposition of the United States," **this is not a contract between the parties, but is**

binding in law. It amounts to nothing more than giving to Congress the power to make all necessary rules and regulations for disposing of the public lands.

NO POWER TO CREATE UNEQUAL STATES.

Neither the United States nor any state has the power to do any act or pass any law which will create inequality between the states and any attempt on the part of either to do so is void and of no effect; ab initio. 39 Fed. 730; 9 Pet. 224; 15 Pet. 449; 104 U. S. 621; 146 U. S. 387; 152 U. S. 387; 164 U. S. 240; 168 U. S. 349; 176 U. S. 83, 87; 187, U. S. 479, 483; 190 U. S. 508, 519; 198, U. S. 371; 198 Fed. 539.

A LEADING CASE.

The part of the decision in Pollards Lessee v. Hogan which relates to tide lands has been followed ever since. It has had frequent application and the courts have uniformly been guided by it. But the other part of this great leading case **has had no application,** until the present, because Congress has been working in harmony with the basic trust and disposing of the public lands, and allowing them to pass to the states. And having no application, **it has been forgotten,** together with the basic facts which constituted the title to he public lands. **But now that unequal states are being created,** its enunciation of fundamental principles must be studied anew. The proposition that tide lands are the property of the state, which has been so firmly established by the courts, can not be maintained in the future, if the other part of

Pollards Lessee v. Hagon, relating to the upland is denied, for both rest on the same foundation, **on the perfect equality of the states.**

EQUALITY OF STATES.

Whether the equality of each state with the others, can not be changed by any act of the United States, or of any state, as is held by the United States Supreme Court and which **seems the sounder view,** or if unequal states may be created by agreement between the United States and any particular state, as might be suggested by the ordinances April 23, 1784, and July 13th, 1787, **in either event** the United States **alone** has no power to create unequal states, by executive act, by law of Congress, or by judicial interpretation of those laws, and all such attempts are void. 198 Fed. 539.

POLLARDS LESSEE V. HAGON REAFFIRMED.

On May 29, 1911, the U. S. Supreme Court, in Coyle v. Oklahoma, 221 U. S. 559, reaffirmed the perfect equality of the states, in their relation to the nation, and discusses at length the meaning of this equality. It quotes Pollards Lessee v. Hagon in detail and reaffirms every point touched upon. This decision will be of the greatest assistance when the fundamental relation of the status of the public land to the equality of the states is in issue before the Supreme Court.

COURT DECISIONS CONTRADICTORY.

There are two series of decisions by the U. S. Supreme Court. One series, unbroken from the foundation of our nation up to the present time, maintains

the equality of all the newer states, with the original states. The second is a modern series, and holds that the United States owns the public lands. These two series of decisions are simply contradictory interms, one with the other. There is no middle ground. If one series is true, the other series is false. If one series stands, the other series must fall. If the states are to remain equal, the public lands must be transferred to the states where they lie. If the United States owns the public lands, and holds them permanently, the reserve states are automatically reduced to subordinate and unequal states, and our present form of state and national government is undermined and ready to fall.

INTERPRETATION OF CONSTITUTION.

In view of the course of the development of the title to the public lands, the contracts entered into and the trusts undertaken by the United States, it is obvious that, in the clause of the national constitution relating to the public lands, "property" means a limited tenure only, subject to these trusts which the United States bound itself to perform.

CLAIMS OF THE UNITED STATES.

"Claims of the United States" in the same clause of the Constitution as the word "property" means the right of the United States to control the public lands, so long as it bona fide disposes of them; that the lands shall be free from taxation, during this temporary holding; and that the profits of sale belong to the United States.

CLAIMS OF ANY PARTICULAR STATE.

"Claims . . . of any particular state" also has a complex meaning, **embracing the terms of the transaction by which the public lands were acquired.** It means, that the public lands, within the recognized boundaries of the original states should not be interfered with by the United States; that the claims of states, to western lands, which they had not transferred at the date of the national constitution, should be respected; that the public lands should bona fide be transferred to the jurisdiction, taxing power, eminent domain and sovereignty of the states where they lie, **within a reasonable period;** in order that a new state might be erected which will be equal to the original states in every respect whatever; and that the status of the public lands shall not be changed without the consent of the states, where they lie.

NO POWER IN CONGRESS OR PRESIDENT.

From the foregoing, it becomes clear that neither Congress nor the President have any power, whatever, to establish a permanent tenure of the public lands. All their acts, endeavoring to do so, are simply illegal and void. They can give no title to the lumber, which they pretend to sell from the forest reserves, or to the mineral or oil sold from mines or wells on a national lease. Such lumber, or mineral, or oil, when severed from the soil, can be followed by the state and be recovered. For the United States, holding but a partial title to the public lands, can convey titles only for such uses and purposes as are granted in the trust, and for no other use or purpose whatever.

CONSERVATION RESTS WITH STATES.

The power, to establish a permanent tenure of the public lands, rests with those states alone, which contain public lands. Only by the consent of these states can a legally valid conservation policy be established. And this consent must be in such terms, that unequal states will not be created thereby.

CALIFORNIA ADMITTED.

Five years after the decision was rendered in Pollards Lessee v. Hagon and while this decision was fresh and fully understood, California was admitted to the Union, September 9th, 1850. The act of admission contained the usual declarations, which are taken from the ordinance of July 13th, 1787.

> "The state of California shall be one and is hereby declared to be one of the United States of America and admitted into the Union on an equal footing with the original states in all respects whatever. The people of said state, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law and do no act, whereby the title of the United States to and right to dispose of the same shall be impaired or questioned. They shall never lay any tax or assessment of any description whatever upon the public domain of the United States."

To assume that the United States have the right to appropriate one third of the area of a sovereign state is to take the position that the United States had the original right to retain permanently all the lands of the west. **It did have such power, if it owns the public lands.** As the exercise of such a power would have pre-

vented the formation of any new states whatever, the mere statement of such a proposition demonstrates its fallacy.

A POLITICAL REVOLUTION IS BEING FORCED.

The area within the reserves of the United States is greater than the combined territories of Great Britain, Portugal, Holland, Belgium, Denmark, Switzerland and Greece. If we compare the states within these vast reserves with that of the original states, **which were named as the standard of comparison, we find that it is neither republican, nor free, nor sovereign, nor independent, nor is the soil being faithfully and bona fide disposed of to erect new states, and for no other use or purpose whatever. On the contrary we find that the foundation is being laid for a type of government, entirely new within the United States, and destructively hostile to our constitutional form of state and national government. The state is denied all control of the soil. The federal courts hold jurisdiction; the police power is exercised by the federal troops; the state can levy no real estate tax, even though the right of taxation is so fundamental that a sovereign state can not exist without it. The eminent domain of the state is denied.** This great territory is adminstered by a single head at Washington, and the civil employees are entirely loyal to the central government and hostile to that of the states.

A NEW TYPE OF POLITICAL STRUCTURE.

A student of history can see at a glance that the foundation is being laid for the erection, within the reserve states, **of a political structure which is at least that of de-**

pendent provinces, with a centralized government that is autocratic. That it has sharply defined boundaries. If allowed to develop and become strong, this new third type of political structure, will turn on the state and the national constitutions and destroy both.

PRESENT CONTROL FACILITATES CREATION OF A NEW FORM OF GOVERNMENT.

The present form of control of the public lands is peculiarly adapted to laying the foundation for a new political structure. The administration is in the hands of the Department of the Interior and of the Depart- of Agriculture. The courts are not disposed to interfere with the rules and regulations which these departments may make for the administration of the territory under their control. Thus, having a free hand, and looking to permanent tenure, and promulgating its own laws, for these rules and regulations become laws, enacted without a parliament, the moment the public lands are held in permanent tenure, and with unfettered control, the Department of the Interior now, under the plea of protecting the public from the aggressions of corporations, is itself endeavoring to appropriate the trust fund of the State of California.

RIGHTS OF CALIFORNIA.

As the only right of the United States in the public lands is the power to dispose of them, any rentals from oil lands, or pasturage in forest reserves, or sales of lumber **belong to California and should go into our state treasury to reduce taxation.** It is but a matter of time, when this practice of a benevolent despotism, will drop its benevolence.

A CRISIS IN OUR HISTORY.

We have reached a profound crisis in the history of our nation; the crisis of a change from our state and national government, to that of a national government, without states. This review discloses the work of the men who laid the foundation of our government so wisely, and so well that we of today, in wealth, in freedom of opportunity and in general welfare, are living in the golden age of the world's history. Now, the burden rests **on the reserve states to preserve and to protect** the form of government that has proved to be so beneficient. And as California is the largest, the richest, and the most populous of the reserve rights, **it is eminently fitting that she take a position of leadership.**

CALIFORNIA IN VIRGINIA POSITION.

California stands today in substantially the same position, regarding her territory and her interests in the public lands of this state, that Virginia stood in, when the determined effort was made to strip her of her lands, during the controversy over the western territory. It is the duty of California to show the same resolution that Virginia displayed, to the end that our state territory may be transmitted to future generations, undiminshed in extent; that our state may stand, not relegated to a position of inferiority, but as a peer among equal states, and loyal to safeguard the foundations of our nation.

REVISION OF CONSERVATION.

The entire subject of conservation needs a fundamental revision to bring it into harmony with our

political structures, and with the rights of the reserve states. It is not necessary to destroy the United States, in order to establish the conservation policy. But obviously this is a state, and not a national function. The permanent tenure of the public lands by the United States effects a revolution. And a revolution is a move, that is beyond the power of the courts to consider.

CITATIONS.

The citations of the proceedings of the constitutional convention are taken from Mr. Madison's report of the proceedings of that convention.

See also: Documentary History of the Constitution of the United States, by Dept. of State, Washington, Vol. III pps. 5, 7, 19, 64, 108, 451, 607, 608, 644, 645, 646, 649, 650, 651, 732, 783.

The deeds cited are set up in full in the proceedings of Congress on the dates given. It is to be noted that the United States is now reaching out to try and regain control of the streams.

NATION HAS DEEPER FOUNDATION THAN CONSTITUTION.

The error regarding the status of the public lands has arisen from regarding the constitution as the fundamental document; and in forgetting that **our nation has a foundation deeper and broader than the constitution; and that the constitutional convention was limited and bound by the contracts that Congress had entered into.**

CONTROL OF NAVIGABLE STREAMS BY UNITED STATES.

The control of navigable streams, by the United States, with its vast present consequences, takes its rise from the settlement, by which the United States secured control of the western public lands. The relations of the states and of the nation thereto are to be understood and interpreted, in the light of this settlement and its expression in the ordinance of 1787, declaring that the navigable waters leading into the Mississippi and the St. Lawrence, shall be common highways, and forever free, as well to the inhabitants of the said territory, as to the citizens of the United States, and those of any other states that may be admitted into the confederacy, without any tax, impost, or duty therefore.

This is the only **permanent** power that the United States has in streams. Any act of Congress, or of the President, attempting, other than this, to fix a permanent control of streams, or of power sites, in the United States, and to gain revenue therefrom, is simply void. It it beyond any power resting in Congress. A reserve state has a perfect right to demand an accounting from the United States for all funds, derived from the public lands or streams by any other method than by disposing of them.

GEO. EDWARDS.

NOTE:—In order that the reader, who is not a lawyer, may properly co-ordinate the information, contained in this brief, attention is called to the fact that this is apparently the first full exposition of the fundamental connection, between the status of the public lands and the perfect equality of the newer states, with the original states, which has been such a vital factor in the rapid development, homo-

geneity, and strength of our nation. It was touched upon, in a few words, by the U. S. Supreme Court, in 1845, but the subject is substantially without literature; and this connection has long since been forgotten by courts, by lawyers, and by the general public. A change of this status of the public lands at once changes the form of our government.

This, also, apparently is the first interpretation of the brief and obscure clause, in our national constitution, relating to the public lands, which has so long puzzled the courts, and which reduced them to relying on the single word "property" in determining the status of the public lands.

4048
W. H. Davis collection

CLEMENT BOYREAU

VS.

R. CAMPBELL, AND OTHERS.

CIRCUIT COURT, UNITED STATES,

FOR THE

Districts of California.

OPINION

SAUNDERS & HEPBURN,

ATTORNEYS FOR PLAINTIFF.

OPINION BY JUSTICE McALLISTER.

SAN FRANCISCO:
EUREKA PRINT, No. 171 MONTGOMERY STREET.
[1856]

Clement Boyreau
vs.
R. Campbell, *et als.*

Circuit Court.

This case came before the Circuit Court of the United States for the Districts of California, in and for the Northern District of said State, at its September term, 1856, and a Jury being waived by the respective parties, the case was submitted to the Judges on the law and facts with a reservation to the parties of the right to except to the rulings of the Conrt in relation to the admission of testimony, as well as to the decisions made upon the law of the case upon its merits.

The grant under which by *mesue* conveyances plaintiff claimed, was alleged to have been lost and plaintiff called Juan B. Alvarado, who was Governor at the time the grant was issued, and who testified that the expediente in an application for land, consists of the petition of the applicant, the orders for information, the decree of concession, and a draft of the title paper issued to the party. These documents are collected together and preserved in the archives, constituting what is termed the expediente. He further stated that it depended entirely on the Secretary whether he made out the title first and then copied it, or made the draft first and then drew up the title to be signed. It was part of the mechanism of his office—that in his time it was customary to give a verbal order to the Secretary to write out the concessions, and that the Secretary sometimes (as in this case,) made out a final title without an order of concession signed by the Governor. The witness was unable to recollect an instance where the archives showed a decree of concession on a separate piece of paper, where no information was asked for, nor did he know whether any of the expedientes contained more than one

draft of the title. He did not remember any case where the Governor made any alteration or correction of the title as drawn up. He also stated that he recollected various instances where the concession was presented unsigned to the Departmental Assembly. In such cases they made no difficulty provided it was archived. Sometimes the Secretary of the Assembly, or that of the Governor observed it and had it signed, to regularize the proceedings. He further stated that it was usual to deliver the title to the petitioner subject to the approval of the Departmental Assembly, and afterwards to send the expediente with a draft of the title to the Assembly, for their approval, and that he never knew a case where the draft of the title was put in the expediente without tho original's having been first delivered to the party, nor where, after the draft was made, the Governor refused to sign, and the grant was stopped. The witness then, on being shown the expediente, stated that he knew the first paper; that it was the original petition of Estudillo, and was in his hand-writing, which he knew. The next paper, the decree of concession, he proved to be in the hand-writing of Francisco Arce, at that time first officer of the Secretaria. The third paper he also stated to have been written by Arce. The writing on the desino or plan, he stated to be that of Fernandez, an ancient Alcalde of San Jose. He added that he recognized all these papers as the original documents on which the title issued, and that the plan was not presented by the petitioner, as he was already in possession of the land, but was made by the prefecture in pursuance of his (witness's) orders, and as a means of obtaining information and to enable him to decide a dispute between Estudillo and Guliellmo Castro as to boundaries. That, on receiving the map he called the parties together, but being unable to bring them to an amicable settlement, he sent for Jose Castro, and instructed him to endeavor to settle the dispute, and in case of failure, to report what was just to be done. That Jose Castro being unable to effect the settlement, gave him a map with a line drawn on it, as that, he thought it just to be established. That the witness accepted this line, and ordered the grant to issue bounded on the east by the Deramadores de Aguas on the side of the high hills, on the west by the Bay, on the south by the Arroya de San Lorenzo, and on the north by the Arroya de San Leandro. He also stated that the grant contained the usual conditions, and was for a league more or less, and that there was a special condition that the Indians should not be molested. A paper was then shown to the witness, which he identified as the official note sent to the Secretary of the Governor when the latter asked for the first plan. He also identified and proved the report of Jose Castro, (a document produced from the archives,) and stated the marginal order to be in his (witness') hand-writing.

R. A. Thompson, one of the late Board of Land Commissioners, swore that he had examined some three hundred or four hun-

dred expedientes. That they did not all contain copies or drafts of the grants. That they frequently varied from the grants delivered to the parties, but in a majority of cases not materially; but in some cases they differed on substantial points. That the proceedings as shewn in the expediente, were regarded by the Board as affording proof of the existence of a grant. That he never saw any book where the titles were recorded. That one has been mentioned, but that it was not kept up except in the earlier times.

John Saunders deposed that his professional firm had been employed to prosecute the claim under the Estudillo Grant. That with a view to prosecute the same he had received a Spanish paper signed by Juan B. Alvarado as Governor, and Manuel Jimeno as Secretary. It was a grant to Joaquin Estudillo for the ranch of "San Leandro."

Governor Alvarado was recalled, and the original expediente of Estudillo from the archives, was handed to him, and asked if he could identify it, and then testify from his own recollection, to the contents of the original grant delivered to the party.

To this the defendant's counsel objected on the grounds,

1. Because the draft was not made by himself.
2. It was not compared by him with the original.
3. Because it is not a record, nor a copy of the original authorized by law to be taken.
4. Because not the best evidence in whose hand-writing the grant is.

The objections were overruled.

Witness Alvarado, on looking at the expediente identified it and recollects it distinctly, and the expediente was admitted as evidence.

B. C. Hopkins was sworn. Stated he was a clerk in Surveyor's office; that a book of titles is to be found among the archives, for the years 1834, 1835, 1836. Since that time no such book has been kept or found. This witness identified the expediente as one of the archives.

In order to fortify the testimony in relation to the existence of the original grant, S. G. Tenant was sworn on behalf of plaintiff. He stated that he had seen the original grant in the possession of John B. Ward, about a month after the death of Estudillo, at San Leandro, at the house of the widow of Estudillo; it was signed by Governor Alvarado, whose hand-writing was known to witness, and as witness believes, by Manuel Jimeno. The grant was dated in 1842. Witness was acquainted with the Spanish language.

Jose Berryesa, another witness, stated that he had seen the original grant to Estadillo in 1843 or 1844, and that the signatures of Alvarado and Jimeno were genuiue. that the grant was for the "San Leandro Ranch," for one league square, and witness gave the boundaries of the ranch.

John B. Ward, a witness for plaintiff, was called to prove the loss

of the original deed. He was objected to by defendants' counsel as incompetent, having married one of the daughters and heirs of Estudillo. He was admitted by the Court to prove the loss. He stated he had received a grant signed by Alvarado and Jimeno officially, from the professional firm of Saunders & Hepburn, Attorneys at Law, on 2d September, 1853, at their office in San Francisco, at one o'clock, P. M. That Hepburn & Saunders had been employed professionally by the heirs of Estudillo, to prosecute their claim before the Land Commissioners; that having been advised by Messrs. Saunders & Hepburn to engage additionally the services of Judge Thornton, he took the grant to carry it to that gentleman's office; on his way there he heard of a squatter difficulty on the opposite side of the Bay, in the vicinity of the San Leandro, in which a man was killed; that witness hastened across the ferry; that the weather was bad, and witness undertook to pilot the boat; that she was detained all night on the water; that next morning the grant was gone; thinks it must have dropped from his person during the night; he had searched for it in vain, and has never been able to find it.

Cross Examined—Witness had seen the document before he received it from Saunders & Hepburn; it was signed by Alvarado and Jimeno; it had been exhibited to witness by Signora Estudillo, as her title; it was the same document received by witness from Saunders & Hepburn.

The defendants moved the Court to exclude all evidence, oral and documentary, which had been given to prove the existence, loss or contents of the original grant, on the grounds,

1. Because the grant itself, if produced, would not prove that a legal title had passed to Joaquin Estudillo.

2. Because the grant had not been approved by the Departmental Assembly.

3. Because there was no official segregation of the land from lands of a like character.

4. Because the title is merely equitable.

5. Because the best evidence of the former existence of the grant has not been produced, the law showing that a record was required to be kept.

This motion was overruled, reserving it for the final decision of the Court, after all the testimony should have been delivered.

We proceed now to dispose of it.

A further examination satisfies us that there was sufficient testimony offered to authorize the introduction of secondary evidence to establish the existence, contents, and loss, of the original grant, and that the best evidence of which the nature of the case permitted, was given for that purpose. As to the objection that the title of the plaintiff is merely equitable because there had been no previous approbation of his grant by the Assembly, it is important in considering it to look to the relative situation of the parties.

Joaquin Estudillo, under whom plaintiff claims, went into possession of the land in controversy in 1837, which he retained until 1842, when he obtained his grant. From that time he continued to reside upon it until his death in 1852, since which time his widow and family have been in occupation of it. During this long possession he has had a large stock of cattle on the place, and cultivated it to the extent of some three hundred acres in different parts. Such is the title of the plaintiff.

The defendants have given no evidence of title whatever, unless the position they assume be correct. It is that the land in controversy is part of the public domain, to which they have pre-emption rights. This position cannot be deemed as giving title. The Act of 3d March, 1853, entitled "An Act to provide for the survey of public lands in California, the granting of pre-emption rights, and for other purposes," expressly exempts from pre-emption this very land, claimed as it is "under a foreign grant or title."—X Statutes U. S., 246.

2. The land in dispute, if public land, as contended for by defendants, is so because it was acquired by the United States government by treaty from Mexico. Now, the Act of Congress of 3d March, 1807, entitled, "An Act to prevent settlements being made on lands ceded to the United States, until authorized by law," expressly inhibits the entry upon, taking possession of, or settlement on any lands ceded or secured to the United States, by any foreign nation, which lands have not been previously sold or leased by the United States, or the claim to which land has not been previously recognized and confirmed to the person entering, &c., by the United States.—II. Statutes U. S., 445.

In the case at bar, the defendants pretend to no title whatever from the United States, and we have seen by the Act of Congress of 3d March, 1853, in special reference to lands in California, the land in controversy, claimed as it is, under the grant of a foreign government, is exempted from pre-emption rights. The defendants are therefore to be viewed as mere occupants of the premises, without pretence of title. As such occupants, they rest the defence of their possession upon the invalidity of the title of the plaintiff. Under this view of the case the Court will make every intendment which the law allows, in favor of the plaintiff's title. The ground on which it is assailed is, that the grant under which plaintiff claims, never having received the approval of the Departmental Assembly, conveyed only an inchoate title. Whether, in fact, such approval was obtained, is matter of evidence. Now, in this case, the grant in terms recites that it is given by virtue of the said grant, and the approbation the party had received from the most excellent Departmental Assembly. Now, it this recital in the grant be conclusive, there can be no doubt that the fee passed by the grant. If not conclusive, it is *prima facie* evidence, which must prevail in the absence

of all other testimony. The cotemporaneous date of the concession and the grant is relied on by the defendants, but this cannot be held as disproving the positive statement in the grant. *Non constat*, that the Assembly was not in session at the time, or an approval of the contemplated grant had not been obtained at some previous session by the Governor. The grant, under any view taken of it, comes within the definition of a colorable title, as given by the Supreme Court of the United States, who say that "color of title is that which, in appearance is title; but which in reality is no title."—XVIII. How. 56. The grant professes and has on its face all the requisites of a complete legal title, and constitutes at all events colorable title, which, accompanied by possession, will maintain an action against mere trespassers.

In the course of the trial the defendants called the plaintiff, Clement Boyreau, who deposed that he did not know Robert Grimes Davis except in connection with this case. On the 14th November, 1855, at the requezt of a friend he acccpted the transfer of the undivided half of 1-18 of the Rancho de San Leandro, for the consideration of $8,000. He accepted the transfer to oblige a friend; the deed was not delivered to him; it was deposited with his attorneys, Saunders & Hepburn: he had no interest in this purchase himself; a friend requested him to permit the title to be transferred to him, and his attorneys informed him they held the title for him; that it was in their office subject to his disposition; he had never doue any act limiting or impairing his title; did not know whether the consideration had been paid by any one; he held the title for a Mr. Touchard; did not give orders personally for the institution of this suit.

The deed to the plaintiff had been previously given in evidence. The defendants now moved to exclude it on the grounds,

1. Because it was merely colorable and executed solely to give jurisdiction to this Court.

2. Because there was no sufficient proof of the delivery of the deed.

The objection was overruled, and the Court thinks correctly.

It was contended that a deed merely colorable, passed no title to the plaintiff. But we are of opinion that by this deed the legal title was vested in him, and that the ground of objection that he is not the real but merely nominal party to the controversy, the real party being a citizen of this State. Had this objection been taken by plea in abatement, it would have been sustained. But the defendants having omitted to interpose it, cannot now avail themselves of the defence. Such has been the ruling of the Supreme Court, where the citizenship of the parties to the record has been sought to be shown on a trial of the merits, and the same rule applies where a similar fact is attempted to be proved with regard to the real party to the controversy.

The expediente of one William Castro was next introduced by the plaintiff. It was proved to have come from, and to be a part of the Mexican archives in the Surveyor General's office, and contained a copy grant, and desino of a ranch directly bounding on the San Leandro ranch, and was offered to show the line recognized by the Mexican authorities at the time, as to the line which on one side bounded the ranch of San Leandro.

It was objected to and the objection overruled, as the Court thinks correctly.

The plaintiff then introduced several witnesses to establish what are called the Rodeo boundaries of the San Leandro. This was objected to, and the objection overruled. The question as to these boundaries will be discussed hereafter. The genuineness of the grant was assailed by defendants by the introduction of the testimony of one Marcus Esquilla, who deposed that in the spring of 1849, he had a conversation with the grantee, Estudillo, in which the latter showed witness the title papers to the rancho which were not signed, and the reason assigned by Estudillo for their not having been signed, was that the government would not make a grant until he, Estudillo had effected some settlement with the Indians; that the said papers formed what is called an expediente, and included the form of a grant, which was not signed; that said Estudillo told witness these were all his title papers. This conversation is aileged to have taken place in the spring of 1849. To discredit this testimony a witness, Felipe Fierro, was sworn, who deposed that he was well acquainted with Esquilla, and corresponded with him about his business until his death, and subsequently with his brother; that in May, 1850, both Estudillo and Erquilla, happening to be in the store of witness, the latter asked "Who (meaning Estudillo,) that gentleman was?" Witness did not introduce the parties. It is evident that if Esquilla did not know Estudillo in May, 1850, he could not have had the conversation with him he swears to, in the preceding year. But still, it is better to view the testimony of the discrediting witness as erroneous as to the time, and consider the fact of such conversation as established by the evidence of Esquilla. Still the recollection of a witness as to spoken words of several years standing are to be received with caution, when the testimony which has been given of the existence of the original grant is considered. The witness may be prepared to swear that a party had said the papers exhibited were all the papers in his possession; still, there may have been misapprehension as to what was said, or in fact, all the papers may not have been exhibited.

Again, the reason which the witness assigns as the one given by Estudillo for the non-signature of the grant, to wit: that he had omitted to settle with the Indians, is not in unison with the practice of making grants subject to the Indian rights. It is further contradicted by the fact in this case, that the grant is made to exclude the

possessions of the Indians. A previous settlement, therefore, in relation to them, was not indispensably necessary to the issue of the grant. To divest title on such testimony, where the counter evidence is as strong as it is in this case, would be to decide contrary to the weight of evidence.

Governor Alvarado swears he issued the grant. The expediente from the archives proclaims, and the long possession of the grantee under it, tends to prove its genuineness. Jose Berreyesa stated that he had seen the original grant in 1843, and proves the signatures of both Alvarado and Jimeno.

John B. Ward swears that he had seen the grant, and also proves the signature of Alvarado, and lastly John Saunders swears to have been in possession of the grant. In view of all the testimony, and acting as jurors, we find that the signatures to the grant have been established. Having stated the rulings of the Court and the objections of counsel thereto, during the trial, we proceed to consider the merits of the case, and the evidence which establishes the possession of plaintiff, and its extent.

It is ascertained that long previously to the intrusion of the defendants, the grantee and those who claimed under him had been in possession of the tract sued for; that from 1837 to 1842 the grantee had resided on the rancho known as the San Leandro; he had built a house upon it, resided thereon, and stocked it with cattle; his possession previously to the issue of the grant had not only been recognized, but actually authorized by the Mexican government, and in 1842, when he obtained his grant, the general limits of his land were notorious. It is proved by numerous witnesses that both before and after the grant, the tract he occupied, and was recognized as possessing, was the San Leandro Rancho, of which the notorious and undisputed boundaries were the two Arroyos of the San Leandro and San Lorenzo, the hills and the Bay, and to have been with his family as notoriously and completely in the occupancy of it, as according to the customs of the country, any Californian could be. He occupied it until his death is 1852, and stocked it with cattle, marked with his brand. No one, save a few Indians, lived or occupied any portion of his land, and over the whole tract he asserted all those rights which at that time could have been asserted by the proprietor of land in California. He cultivated portions of it in the neighborhood of his house, and near the San Leandro Creek.

In 18 , the witness Valencia, took, by permission of Estudillo, her father-in-law, cattle to pasture on the rancho, which were kept on the tract between the two creeks, and with the consent of Estudillo, her husband cultivated a portion of the land on the San Lorenzo Creek. From the whole tract the cattle of Estudillo were gathered, and on the stock running within its limits he exercised all the rights of ownership. For the purpose of showing the nature and extent of his possession, the plaintiff introduced testimony to

establish what are termed the "rodeo boundaries" of his ranch. The nature of these requires explanation. The extensive tracts of land belonging to the former inhabitants of this country were never separated from each other by enclosures. But a small portion of the large extent owned by the rancheros was put under cultivation, and their herds of horses and cattle, in which their principal wealth consisted, roamed at large over the extensive tracts conceded to them by the government. At a certain season of each year, however, the cattle were collected from the limits of the rancho, at a place usually near its centre, called the "rodeo" ground. Here the young cattle were branded with the mark of the owner, and the whole herd were confined for a short period, to habituate them to the spot and ensure their return at the ensuing season. The proof of ownership furnished by the brand on the animals, seems to have been universally respected, and wherever the cattle might wander they could be reclaimed by the owner. The young, unbranded cattle which still followed the mother, were recognized as belonging to the owner of the latter; but there were many which had no mark, and having ceased to follow the mother, mingled indiscriminately with the herd. These were called *orijanas*, and by the custom of the country were deemed to belong to the owner of the ranch on which they were found. In driving, therefore, the cattle to the rodeo, the vaqueros were required to observe scrupulously the boundaries of the ranch, for only the *orijanas* found within them were considered as belonging to the proprietor giving the rodeo. That these boundaries were generally respected is proved by several witnesses. To drive cattle on the occasion of a rodeo, from a neighbor's land, being considered, as stated by one of them "worse than squatting." The observance of the boundaries was not secured by the customs of the country alone, for the neighboring rancheros were always invited to be present when a rodeo was to be given, and attended on horseback to observe the limits from which the cattle were driven, and to reclaim any of their own that might have mingled with the herd. The rodeo boundaries of a ranch, or the limits from within which all the cattle upon it were collected together, thus became generally known, and when, as in the case at bar, they have been recognized and acted upon for a long series of years, they afford the best, if not the only evidence of the limits of an actual occupation, which the habits of the people permitted them to furnish. To exact of proprietors using their lands for purposes so different from those to which we apply them, evidence of actual occupation by enclosures or cultivation of the soil, would be to demand what could never be afforded. There is surely no magic in a fence. In a country where land is owned in small parcels, and usually enclosed, such enclosure affords unmistakeable evidence of appropriation and occupancy. When, therefore, a right is claimed to have been acquired by an adverse possession without color of written title, the party is restricted

to the land the exclusive right to which he has asserted notoriously by enclosing or cultivating it. The fence or cultivation, of themselves, confer no title. They only afford evidence of the intention to assert a right to the land included within them. The same evidence is afforded by an entry on and occupation of a part of a tract of land under color of written title to the whole. For in that case a party is deemed to be in possession up to the limits of his deed. But other acts equally significant of the parties' intention (being the strongest that circumstances admit,) may have the same effect. Where by the customs of a country, acts of ownership have been exercised, and the land within certain limits recognized as claimed by those acts. Where the party has used and possessed the land in the only way in which an owner could use and possess it, and as none but an owner would use it; where the limits of the land to which he thus asserts his rights are notorious and have been recognized for a series of years and undisputed, it seems to us that such facts furnish evidence of a possession as satisfactory as if, according to the customs of an old and settled country, a fence had been built about it, and sufficient to enable a party to maintain his right to it in a Court of Justice against intruders who have entered not only without pretence of title, but in open violation of law. In this case the rodeo boundaries are clearly shown to have been established and recognized by the neighbors of Estudillo, from a period long anterior to the acquisition by the United States of this country. By the ascertainment of these boundaries, the plaintiff has established the actual extent of his actual possession. To fortify the evidence of possession testimony was adduced to prove that in 1853 shortly after the death of Estudillo, his representatives, who contined to reside on the land, rented a portion of it, about three hundred acres, to one Joseph Demont, who entered into possession. This land was enclosed by a fence, and includes the land upon which one of the defendants, and a portion of the land upon which another have "settled."

In the same year, and after the encroachments of American settlers had taught them the virtue of a fence, the representatives of Estudillo employed one J. C. Pelton, who, under their direction fenced in several thousand acres, and erected on the land some six or seven houses. The fences and houses have been burnt by accidental fire, and a portion of the land is now occupied by some of the defendants to this action. Recapitulating, then, the evidence as to possession, we find that Estudillo, the grantee, went into possession in 1837. In 1839 he obtained a provisional license to continue in possession, from the Governor. That in 1842 he obtained a grant from the date of which he has occupied and claimed the ranch of San Leandro with well known boundaries. That he built a house upon, and cultivated portions of the land. That he had his fields, corrals and rodeos. That his cattle roamed over it bearing his

brand, and were herded upon it by his vaqueros. That at stated periods, according to the recognized customs of the country, his cattle were driven together from the external limits of the ranch, and that in every way in which a Californian could use land, he exercised acts of ownership over it. That the ranch was recognized as being in his possession, and so notorious was the fact that an old resident of the country swears "that it was so fixed in his mind that he was the owner that he took it for granted."

After the death of Estudillo we find his representatives residing upon and claiming the whole of it, and though intrusions soon commenced, in the hope of retaining it, renting a portion of it, and surrounding with fences several thousand acres, portions of which are now "settled" upon as "vacant public lands."

If the foregoing facts do not constitute possession, then no occupancy can be established by a California Ranchero, for nothing short of actual enclosure or cultivation would suffice. We consider the evidence sufficient to establish a prior and peaceable possession, and its extent so as to authorize the plaintiff to maintain this action. The rodeo boundaries have been established so clearly by the testimony that the plaintiff might have recovered to the extent of them. But he has himself introduced a written title, and to that we must look. The grant calls for the boundaries of the ranch, the arroyos of San Leandro and San Lorenzo on the north and south, on the west by the bay, and on the east by the Deramadores, or springs of water, and from thence by a line southerly drawn to the San Lorenzo so as to exclude the possessions of the Indians. These limits on the east are considerably within the line of the crest of hills which, according to the testimony, forms the eastern rodeo boundary. But the plaintiff producing this grant, must be restricted to the boundaries thereon designated. At the time of the grant, one or two Indian families inhabited an adobe house on the land at the base of the eastern hills, and had some cultivation near the house, and at a bend of the San Lorenzo at a point called the "Paso Viejo." It is not easy to ascertain what at that time was the precise extent of the Indian possessions. It is practicable, however, to adopt a line which will exclude the land which, under any reasonable view of the evidence, they could have occupied. With the exception of the uncertainty which attends the precise location of this eastern line, the boundaries of the ranch have been ascertained by proof of what we consider as complete possession as could be furnished by any California ranchero. The quantity of land granted to Estudillo was one league a little more or less. It appears from the testimony that the actual quantity exceeds that amount but a fraction, and may be demed to be covered by the words "more or less," inserted in the grant. The complete possession of all the land to the extent of three of the boundaries and beyond the fourth, is established by proofs. It remains to enquire, after restricting the last mentioned

line to that called for in the grant, which of the defendants are intruders upon it. A stipulation by the parties has been filed, in which it is agreed that the defendants respectively occupy the several tracts designated by their names on a map marked A, to which reference is made. On inspecting this map we find some of the defendants in the occupancy of land which at the time of the grant was probably in the possession of the Indians. We shall therefore direct a verdict of "Not Guilty" against them. Against those who are clearly in possession of land not excluded by the grant by reason of the Indian possessions, a verdict of "Guilty," must be rendered. We have fixed the line according to the limits as ascertained by the testimony in this case, leaving its precise location to be established hereafter as between the government and the parties interested in its precise location.

The attorneys of the plaintiff will draw the form of a verdict for signature in favor of William Campbell and William Carhart, and against all the other defendants, who, by the stipulation entered into it is agreed are in possession of the premises.

After the opinion of the Court had been read, the Counsel for the defendants moved the Court to reconsider so much thereof as related to the eastern boundary line of the ranch, whereupon the Court, after argument of Counsel, took the same under advisement and afterwards delivered the following, affirming the former opinion of the Court:

In this case we have been asked by defendant's counsel to re-consider our views in relation to the location of the eastern line of the San Leandro rauch. The line as fixed by us excludes two of the defendants, and includes the balance, and it is urged that a re-examination by the Court may result in so giving the line as to exclude from the operation of the verdict an additional number of the defendants. We have carefully examined this question and now give the result. We are free to confess that the precise location of the eastern line is not easy of accurate ascertainment. This arises from the difficulty of establishing with precision the exact extent of the Indian possessions at the time of tne issue of the grant. The testimony on this point is conflieting, but after a careful review of it, our conclusion is that the possessions of the Indians were confined to the adobe house which they occupied, and its immediate viciuity, and to some cultivated spots of land near the bend of the San Lorenzo Creek at a point known as the "Paso Viejo." Numerous witnesses confine them to those points. One or two of the witnesses testify to a small cultivation almost due west from the springs and about half-a-mile therefrom. But this is opposed by many witnesses, and is repudiated by the fact that to run the line so as to take in this isolated spot would be to so distort the line, as we consider it designated on the map, as almost to destroy its identity. The defendants' counsel in his brief, relies on a line deposed to by one of the witnesses, Ignacius Peralta.

That this line was not intended to separate the Indian possessions from the land of Estudillo is evident because the witness tells us that he knew the ranch of Estudillo in 1840, 1841, 1842; and 1843, and that he knew no line dividing the land of Estudillo from that of the Indians, although the witness had lived for twelve years within two hundred varas of Estudillo. The line which the witness deposes to is evidently a line known in the case as the "longitude line," which, with the "latitude line," were run by the functionary Fernandez for the information of Governor Alvarado. This line of longitude, denominated in the counsel's brief the "Peralta line," is urged as the line delineated in the desino of Estudillo's expediente and described in the grant. This line is designated in the grant using the words into which the original has been rendered by the counsel, "a line on the east by the spillings of the springs that are near the house occupied by the Indians, and on the south by a line drawn from thence to the San Lorenzo so as to exclude the land occupied by the Indians which are located there." Assuming this translation to be correct, there are objections which oppose themselves to the location of this specific line.

1. To adopt it would be taking a part of two lines designated on the desino to form the boundary, viz: the line of latitude to the springs and thence leaving that line, to adopt the line of longitude from that point to the mouth of the San Lorenzo Creek.

2. Such line must at the springs diverge to the west and run to the *mouth* of said creek, instead of running to the creek as called for; this would be to repudiate the creek as a boundary, whereas the desino has written all along that creek these words "Arroyo de San Lorenzo lindero con San Jose," thus distinctly declaring the line of that creek to be the boundary between the ranch and San Jose.

3. This line would exclude a considerable portion of land intermediate the springs and the creek, which confessedly has never been in the possession of the Indians.

4. It is not probable that the grant would call for the creek paralels as it runs to the opposite creek of San Leandro, as the terminus of the line called for, instead of its mouth, if the latter was intended.

These are some of the difficulties which suggest that this longitude line is not the one designated on the map. There are other considerations growing out of the grant itself. To arrive at a correct translation of it we have invoked the aid of competent, skilfull and disinterested persons. The defendants have rendered the words "por la parte del Sud," in the grant as meaniug "on the south," equivalent for the southern boundary. Now, we understand these words in the connection in which they are used, to be translated differently, and further we consider that by the terms of the grant the line to be run from the springs of water is to be a straight line. The grant including the words "por la parte del Sud," reads, the bound-

ary on the east; the drawings (deramadores) of the springs in the lands occupied by the Indians settled there, from this point in a straight line towards the south, to the Arroyo de San Lorenzo without including the land cultivated by the Indians. By this description the line is delineated as a "straight line" fram the starting point to the creek, deflecting only so far as to exclude the Indian possessions. Calling for a "straight line" it would seem that a direct one was intended, departing only from a direct line to the extent of excluding the Indian possessions. Now, the line of longitude would if adopted. traverse the greatest distance which at any point intervenes between the starting point and the ereek, viz: its mouth.

Again, the line called for by the grant is to go south, and the longitude line, if adopted, would run west from the *deramadores* to the mouth of the creek. We have seen that the map itself calls for the San Lorenzo as the boundary in terms, and by having in writing on its face along the creek, the words we have quoted. Again, in the report of Jose Castro to the Governor it is stated that the Mexican functionary Fernandez, had delineated two lines on the desino, one of longitude and the other of latitnde, leaving the selection to his Excellency. By his marginal decree the Governor selects the line north and south as the line of W. Castro's land. This line, it is true, was selected some time prior to the grant to Estudillo, but it serves to show the understanding of the government as to the dividing line between the land granted and the adjoining land. This line is not only delineated on the map which accompanies the expediente of Willlam Castro, but is found also on that of the expediente of Estudillo when he obtained the grant for the adjoining land. Governor Alvarado who issued the grant, swears to the San Lorenzo as the southern boundary. Numerous witnesses depose to the same fact. Ignatius Peralta, one of the defendants' witnesses states that for a long period he lived in the immediate vicinity of Estudillo, and that during that time the pasturage of Estudillo's cattle extended over the plain up to the San Lorenzo on the one side, and the San Leandro on the other. Durante Valencia, a witness, states that in 1842, with the permission of Estudillo, she cultivated lands on the bank of the San Lorenzo, and another witness, A. C. Smith, deposes that in I851 Estudillo had forty acres in barley onthe same creek. The occupancy of Estudillo up to the San Lorenzo and its notoriety as the southern boundary, have been established by testimony. These facts connected with what we consider the correct interpretation of the grant, confirms us in the conclusion tnat the line approximating to what is termed the adobe line, is the true line, and the most careful examination ot the testimony and the language of the grant, have brought us to the conclnsion that protection has been afforded to the former Indian possessions by fixing the line designated in the grant as the eastern boundary, by which all the defendants save Campbell and Carhart have been brought within the limits of the San Leandro ranch.

THE

NEW ALMADEN MINE.

A LETTER

TO THE

ATTORNEY GENERAL

ON HIS

REPORT TO THE PRESIDENT

ON

The Resolution of the Legislature of California,

FROM

A CALIFORNIA PIONEER.

NEW YORK:
BAKER & GODWIN, PRINTERS, No. 1 SPRUCE STREET, OPPOSITE CITY HALL.
1860.

New York, 16th August, 1860.

To the Honorable J. S. Black,

Attorney-General of the United States.

Sir,—

In your Report to the President on the Resolution of the State of California, relative to the "New Almaden Mine," I expected to find one sound logical reason why the Chief Executive of the Federal Government should not listen to the request of a Sovereign State of the Union, when that request was respectfully conveyed to it through its delegation in both houses of Congress; and this expectation I had, even after reading your *sensation* report to the Congress of the United States, on the "Land Frauds in California." I am disappointed, as I had looked to the Attorney General of the United States (in addition to sound reasons for his conclusions) for a concise, impartial report on the matter submitted to him; in tead of which, I find one so thoroughly biassed, so prejudiced in its character, so incorrect in its statements, and filled so abundantly with appeals to prejudices, that were it not officially published as the report of the Attorney General of the United States, a casual reader would be justified in saying it was the production of a pettifogging attorney. In a case like the present, where the subject-matter is of such immense importance to the miners and other inhabitants of the State represented by the petitioners, I thought that you, to whom their petition was referred, would, in a spirit of candor, fairness, and justice, report the *facts* of the case, especially, as you say, the

President "will, of course, start with the presumption that the representatives of California at home, as well as here (Washington) would demand nothing but what is clearly right." But, instead of this, and of elucidating, as it was your duty, any doubtful points, and giving such explanation thereon as might be in your power, in order that the President might exercise his own judgment, "without determining the ultimate rights to said mine," after having had the benefit of your legal advice, you report a foregone conclusion founded on ex-parte testimony; you constitute yourself the judge, and you have, as you say, "taken upon yourself the burden of proving that it (the resolution of the California Legislature) is altogether wrong." And how have you done this? Would it be believed, if it were not patent on the face of it, that this report, founded ostensibly on a respectful petition, is made the vehicle of private feeling; that the office of the highest legal adviser in the United States is prostituted to give a garbled and tortuous account of the subject laid before it; and by means of which, adverse private interests are promoted at the expense of the public. If any one, not conversant with the facts, doubt this, let him read the report.

That the people of California, and its Legislature, had a right to expect anything like attention to their wishes or their interests, would probably be presumptuous on their part, after the repeated proofs of the paternal care bestowed on them by the Chief Executive of the Federal Government and his constitutional advisers. They had only to ask themselves, "How many requests of the people of California, through their representatives in Congress, or direct through their State Legislature, have been attended to, when not strictly in harmony with the views of the Executive, or the policy of the party in power? How often has she been made the foot-ball of politicians at Washington? How have her cries for justice been listened to? How much of the treasure contri-

9962

buted by her to the general Government, has been expended on her wants?" The answer to all the above is: She has been treated since the cession with total indifference, if not with insult. Why, then, could their Legislature expect more favorable attention to their resolution of 22d March, 1860? If they thought *one more request*, and *that* affecting the whole mining interest of the State, would certainly command respect, if not compliance with their wishes, your report now under consideration must have disappointed them. You not only deny their requests, but tell them in unmistakable language, that they know nothing about what they have been doing in this matter; that, in fact, they had better go to their homes and attend to concerns that the Federal Government has no interest in; that it is the height of presumption on their part to interfere between the Federal Government and what they, in their ignorance, fancy to be the *rights* of the miners of California; that their constituents must continue to be, as they always have been, *subject* to the Federal Government; and that if they presume to question privileges allowed them on sufferance, these, even, may be withdrawn; that they enjoy no *rights* as miners, and they may be thankful that they are allowed to exercise the privilege of digging for minerals subject to any decision that the Chief Executive and his Attorney-General may see fit to confirm; nay, they are even threatened in such words as these: "Let them beware how they entangle themselves with such an alliance, offensive and defensive, as this, which is now proposed to them." Such, Sir, is the substance of the language officially used by you in this report.

Could language more arbitrary, or the manner of conveying it more insulting, be made use of by an Autocrat in reply to a petition from his subjects? We are led to ask ourselves—Is this the preamble and resolution of both branches of the Legislature, with the approval of its Governor, of an independent State of

this confederacy? And is this the treatment they meet with? Contumely and insult combined cast on an united Legislature asking for nothing but what they conceive to be right, preferring their request most respectfully, and disclaiming any wish to interfere with the ultimate rights to the mine. It is presumed that the Legislature, composed of representatives of all classes, of all interests, and from all parts of the State, although "not necessarily chosen with reference to their skill and learning in the law," would not pass such preamble and resolution as set forth in your report, without being well satisfied of the *justice* of their assertions, and the expediency of doing what lay in their power to prevent a total stoppage of investment of capital in their mines, and a total want of confidence in working any mine which the President or his advisers, through the vast influence of the Federal power and the command of the public money, might capriciously wish to be abandoned for the benefit of political and other partisans; it was a paramount duty to their constituents to step in and endeavor to arrest proceedings the result of which might, in one day, ruin the fortunes of, and place at the disposal of Cabinet Ministers and their proteges, any mine that such men might take a fancy to; they knew that the machinery and treasure of the Federal Government had been brought to bear against the oldest mining claim in the State, not because it presents more tangible points of attack (for, in this, it is the strongest mining claim in the State, except such as have received the final approval of the Supreme Court of the United States), but because it is rich, and will well reward the hangers-on of Cabinets and Cabinet makers; they knew that although this is the first mining claim that is attacked, and the disposal of it, if such attack is successful, is already made, yet it is not the only one on the list; other cormorants are in waiting and other well-developed mines will be proceeded against for *their* benefit, when this is settled to the satisfaction of

of the Attorney-General. As I before observed, threats are already made in your report as to what is to be the fate of these, if the owners dare utter a remonstrance against this monstrous wrong perpetrated in the name of "Justice according to Law." The old maxim, "Divide and Conquer," is to be carried out; the intention is to separate, if possible, the interest of the owners of the New Almaden Mine from that of the rest of the mining community; get up false issues as to title; lavish unsparingly the terms "fraud," "forgery," "robbery," "foreigners;" throw a mist over the whole of the legal proceedings, and endeavor to show that title to *land*, and that only, is to be considered; make it difficult for the many to distinguish between the true and the false issue; get the precedent established that the Federal Government and its scheming politicians can walk, under a legal cloak, into this old-established, well-developed mine; and you have a source of Federal pap that is as much richer to reward your political drones than the ordinary Federal gifts, as ingots of gold are than bars of lead. There are hundreds of valuable quartz mines in California with appropriate machinery thereon; hundreds of miles of well-constructed ditches enriching surface diggings; tunnels and other expensive works, *all* on government land, which will now pay the Government favorite for his services; keep the right of property in the mineral lands of the State, with all the improvements thereon, in the Federal Government; ignore the right of the discoverer, denouncer, and the worker; place all, where you assert it ought to be, in the hands of the Federal Government, by a decision adverse to the owners of the New Almaden Mine (which is now the *test* case), and how long will it be ere each one of the above sources of wealth is successively bestowed on a clique of politicians? Is there any better reason for applying for, and obtaining, injunction "to restrain waste" in this case, than in any of the other great and small mining establish-

ments in the State; (I do not now stop to examine title, *that* is expressly reserved in the Legislative Resolution on which you have reported) *they* are in every instance, except one or two, notoriously erected and worked on government land; and as you say "the question whether the injunction ought to be dissolved, and the defendants be permitted to carry away and convert to their own use the proceeds of the mine in dispute (between the United States and the claimants) depends most obviously upon the title and upon nothing else;" the owners of the above-mentioned works, who, by long continued working and by large outlay of capital, have brought their mines to a paying condition, can be stopped removing any portion of their mineral in one moment, by injunction, which, if not applied for and granted at the demand of the Attorney-General of the United States, would be granting them "a mere license to rob the public," and would be "an outrage upon all the law of the land;" these works and mines will be confiscated, one by one, by the Federal Government, whenever, and as fast as, they are wanted for Federal exigencies: so satisfied are you that such is the course marked out, that you say "Whether the Federal Government has power to interfere with a citizen who has opened a mine on the public lands, acknowledging the title to be in the United States, and making no false claim of property in himself, is a question *which does not now need to be discussed*." The discussion of it at this time might not suit the present views of the Attorney-General, and it is certainly politic on his part to avoid it. You certainly go a little too far, however, and draw too much on the credulity of California miners when you assert "it is very certain that no such experiment will ever be made." Establish the precedent in this case, and there will certainly be no necessity for discussing the question of the "*power* of the Federal Government to interfere" with other miners who, by your dictum, are set down as having robbed the public of six hundred millions of dollars.

The virtuous indignation shown in this report at the idea of the President of the United States interfering, at the request of a State Legislature, with an injunction of a Circuit Court (it being admitted that such injunction, or its dissolution could not interfere with the ultimate decision as to *title*,) is highly praiseworthy, and to persons not conversant with the management of these matters, appears to reflect great honor on an Attorney-General, who could be so independent as to scout the idea of yielding to the well-expressed wishes of a powerful State; but to others it might seem strange, and not very consistent, that this same Attorney General, in two cases at least (how many more is left to the researches of others), caused to be dismissed an appeal, from the confirmation of titles by the Land Commissioner, which had in each case been taken by the District Attorney. Does the Attorney General assume for himself powers which he denies to his chief? These appeals were as to title, and the dismissal confirmed the title in the claimants without any intervention by the District or Supreme Court of the United States. I leave it to yourself to reconcile these inconsistencies in the use or abuse of Executive interference with Judicial Courts.

You have reported on this resolution as if everything depended on the two-league claim of Castillero; thrusting aside, and keeping in the background the real matter at issue, viz., "the right of the owners of the New Almaden Mine, to work and use the products of that *mine*," of which they were in legal and quiet possession before the cession of California to the United States; which was properly denounced, and legally confirmed to them by the Mexican law; guaranteed to them by the treaty of Guadalupe Hidalgo; in their possession and continued working from December 1845, to the day when they were stopped by injunction, at the instance of the United States; their title not only to this mine, but to a certain quantity of land around it, confirmed

to them by the Board of United States Land Commissioners, and which has been, notwithstanding your assertion to the contrary, the *only* decision yet given by *any* United States Court as to *title*. Waiving the true issue, the only one that the California Legislature is interested in, and that one about which it passed its resolution, and keeping up the false issue, viz., the two-league claim of Castillero, you state five reasons for the opinion you give the President, as binding on him to reject the application of the Legislature.

As the first is acknowledged by yourself to be "no proof, to be sure," it amounts to nothing farther than showing that the office of the Attorney General arrives at conclusions without regard to, or even hearing evidence. The admission is a candid one.

The second is a gratuitous assertion, and has no foundation in fact, as the owners of the New Almaden Mine have never attempted to abandon or sink their question of title. No act of theirs or their agents can bear that construction.

The third, while paying a poor compliment to the integrity and independence of the Legislature of California, which, it is assumed, has been sent hither and thither by the New Almaden Mine owners, asserts an untruth in stating that "if their claim is a good one they might have had a decision in their favor long ago;" "all the delay in the case has been caused by themselves." I state it to be untrue, as no one of the present Cabinet knows better than yourself what obstacles have been interposed by the Executive, in the attempts of these owners to get in, and from, Mexico such testimony as they have there—testimony that from the very nature of the case, cannot be brought out of the city of Mexico, except in their form of interrogatories and answers, and affidavits. It was well known to you (if not, it ought to have been) that the Great Seal of Mexico is forbidden by law to be attached

to copies or extracts from the Archives in the city of Mexico; and yet the counsel for the United States in San Francisco insists that such seal must be attached to copies of claimants' papers before they can be received by the Court; another cause of delay has been the studied silence maintained by the President, the Secretary of State, and the Attorney General, relative to letters written by claimants' counsel during a period of four months, which letters earnestly requesting the United States Government to furnish from the State Department certain documents bearing on this case, were not during all that time even acknowledged by any of the above functionaries; a still further delay has been owing to the United States Government not only withholding all assistance in procuring, in the city of Mexico, such papers as they (the Government) deemed requisite for the claimants to possess to rebut the charges of fraud, but their refusal to allow any of the United States public officers in Mexico to attest, in their official capacity, to the genuineness of certain documents brought before them, or to the signature, in their presence, of Mexican officials and others, who, by reason of their advanced age and infirmities could not travel to San Francisco to give testimony in this case; to the Attorney General contravening an Act of Congress passed for this very purpose, and ordering the Secretary of State to issue instructions to the Diplomatic representatives and Consular officers of the United States in Mexico *not* to regard said Act of Congress, as the sanction of such acts of the United States representatives in Mexico would be "wrong and unjust to the (U. S.) Government." Every offer made by these claimants to the Government for obtaining proof of the documents in this case being genuine and legal, so that the Attorney General might be satisfied as to the truth or falsity of their title, has been rejected by him, and upon what plea? Why, because such testimony, if taken, would be "injurious to the interests of the Goverment."

Does any one want better evidence than this that the Attorney General does not himself believe in the charges of forgery and fraud so unsparingly used in this case? The denial of these several applications is supposed to be unprecedented in the history of this Government. The unnecessary delay can scarcely, after this exposure, be attributable to these claimants.

The fourth reason assigned by you is also incorrect in fact. The Circuit Court has not twice, nor once even, decided against the claimants on the question of title; and this is well known to you. The *only* decision yet made has been by the Land Commissioners, and that was in *favor* of these claimants for the Mine, and three thousand varas of land. The Circuit Court on the bill before it "to restrain waste," granted the injunction on the bill and answer, and refused to inquire into title, which was not to be decided. Judge McAllister says, "So much of the affidavits of plaintiff (U. S.) in this case as goes to title must be discarded by the Court in the adjudication of this motion." Again, "All affidavits as to title have in my opinion been excluded by the well-settled rules of Courts of Equity."

Your fifth reason contains the old assertion of *belief* in the fabrication of evidence, and no attempt at proof is offered; belief, as you acknowledge in your first reason, "is no proof to be sure." Then there is the assurance of the Mexican Commissioners, when the treaty was made in 1848, that there was no record of title like this to be found in the archives of that Government. I assume that you would not quote their assurance if you believed them to belong to that class of "Mexican officials certifying and swearing false titles to be genuine;" in fact, that they were reliable witnesses. What, then, is their statement, when their attention has been called to what passed at Guadalupe in 1848 between Mr. Trist and themselves? Here it is: In an official report made to the Minister of Relations in the City of Mexico,

on 29th October, 1859, Bernado Couto, Miguel Atristain, and Luis G. Cuevas (the three Commissioners referred to) state—"Mr. Trist, who sincerely desired peace, then concluded that all could be reconciled, if we, taking all the information which might be in our power, should insert in the treaty the declaration that no grants of land had been made in New Mexico and California since 13th May, 1846. Our position to obtain such information was the most difficult that can be imagined." The occupation of the City of Mexico by the American army, and the removal of the Mexican Government to Queretaro is then related; then they state "It is manifest that the Administration could not send us information, nor *data* of any kind, in relation to the point of fact which the American Commissioner was determining, because in Queretaro official documents were absolutely wanting, as all of them had remained in the City of Mexico, in the archives of the Ministries. But neither could we make use of them here, because they were in possession of the enemy. The only method of investigation which, in those circumstances, remained to us was to appeal to the recollection of the few officials of the Ministry of Relations who still continued in the Capital." These officials remembered no grant clothed with the circumstances which have been indicated, "and by consequence, D. Francisca Parra (the second official) was of the opinion that we could record in the treaty the declaration required of us." "*There are found in the public offices of Mexico the original documents which prove the lawful acquisition of D. Andres Castillero in Upper California.*" "In respect to our own private knowledge, or rather the particular informations which we possessed, these could not restrain us from making the declaration required by the American Minister, because, although we had heard spoken of the discovery of a quicksilver mine in Upper California by D. Andres Castillero, its acquisition, and the agree-

ments which he had in hand with the Board of Improvement of Mining for advances to be made in working it, yet all this had notoriously taken place previous to the events of the war, and therefore previous to 13th May 1846. In respect to the two officials, of whom we made inquiry, although they had recollected with precision the date of the resolution of the Minister Castillo y Lanzas relative to the said mine, a resolution which, as stated, is of 20th May, it yet should be considered, first, that that act, being in confirmation of those which the local authority of California had executed in December of the preceding year, its legal force naturally retroacts to the date of these last-mentioned acts, and consequently, the officials referred to could not consider the resolution as a grant subsequent to 13th May." "Moreover, the inquiry was made of them (the two officials, who had been asked by the Peace Commissioners as to their knowledge of any grant subsequent to 13th May) not in relation to denouncements of mines anterior or subsequent to 13th May, with greater or less extension of space contiguous, but directly respecting grants of public lands. Upon this inquiry, thus limited, they drew up their negative answer, impelled by the impression, so natural in public officials of Mexico, that a simple and exclusive grant of public lands is not the same thing as the designation of grounds which are granted to a miner in the precincts of a mine which he discovers."

There remains in this fifth of your reasons "the correspondence of these parties with one another, dated subsequent to the conquest, and which has fallen into the hands of our (U. S.) officers." The correspondence here referred to is thus disposed of by the claimants' counsel in their letter of 18th April 1859, to the President: "James Alexander Forbes, who had an interest in the mine, but was not related to any of the firm of Barron, Forbes & Co., and not connected in the general business, was su-

perseded in his agency in the mine in the year 1850, which had continued from October 1849 to May 1850. He subsequently claimed to have in his possession some letters which, if made public, would, as he pretended, tend to call in question the title to the mine. He made sale of them, with his testimony in support of them, to persons holding an adverse interest, for $20,000. These letters were then offered in evidence on the part of the United States, and subsequently other letters were introduced on the part of our clients, which are agreed to be genuine. This whole correspondence shows most clearly that James A. Forbes wished to procure from Mexico false papers, and urged that they should be obtained. He considered the papers which they then had, and which are the same now offered in evidence, and the only ones ever offered in evidence, as ambiguous and imperfect, although genuine, and urged the procuring papers more full and formal. Such were never obtained; none such exist, and no attempt whatever was made to obtain them. The correspondence shows conclusively the entire genuineness of all the papers evidencing our title. We ask of the President a careful examination of all these letters in the order of their dates."

Such, Sir, are the reasons assigned by you to support your conclusion that the title to this mine is fraudulent. Would any jury convict a man of petit larceny on such assumptions? Would any lawyer professing any regard for his legal acumen, have the assurance to expect a verdict in his favor on such flimsy premises and assertions? Not one solitary fact is adduced to show fraud, and yet the President is gravely told by his constitutional legal adviser that he is bound to *assume* such grave charges, and to refuse the application of the Legislature of California. You call these reasons. State-reasons they may be; but if I characterize them as a tissue of reckless assertions, innendoes, mis-statements and false statements, it is probable that the majority of the Legis-

lature would consider my terms fully as applicable as yours. Allow me to make one other remark on the looseness of your language; you state that, "*In the mean time* (between 1851 and 1858) Castillero and his associates took possession of the lands and mine without waiting for a decision upon the genuineness of their title papers." This is simply *false;* Castillero took possession of the mine and 3,000 varas of land in December, 1845; and he and his associates and successors have kept possession of the same to this day. Again, you say the Land Commissioners "rejected the grant as spurious;" this refers to the two-league grant: which was not rejected as spurious, but in the opinion of the Commissioners it had not *matured* into a title, as the Mexican Government had not formally put Castillero in possession. The owners of this grant have appealed from this decision, contending that, as it was impossible for the Mexican government, through its agent, the Governor of California, to put Castillero in possession in consequence of the war with the United States, this claim ought not to enure to the benefit of the United States, it having, previous to the war, passed out of the possession of the Mexican government.

Your sweeping assertion of "Mexican officials certifying and swearing false titles to be genuine," is, to use the mildest term that can be applied to it, most ungentlemanly, and comes with a bad grace from a member of an Administration that has for months been endeavoring to form treaties with a nation whose highest officers are now stated in an official report to be such "that they have not the character, and do not belong to the class of men in whom we can safely repose confidence when they swear to a land grant." This statement is made by you after you were aware that one of these witnesses had been twice Prime Minister in Mexico, once *Chargé d'Affaires* in the United States, once Minister Plenipotentiary to England, besides filling high stations at

home; another a member of the administration of Mines, in Mexico, for six years; one a Director of the College of Mining in Mexico for years; another, an official in the ministry of Justice, with which ministry he had been connected uninterruptedly from 1836 to 1859; and others in high positions. Do you suppose that this wholesale denunciation of men holding the highest offices in a neighboring Republic is to injure the claimants, because you style *them* also as aliens and foreigners? Do you believe that you have the respect, or even countenance of your own countrymen in this scurrilous attack on unoffending neighbors? I fear you have much yet to learn; and a great deal, certainly, of the generous and just feelings of Americans, if you fancy that such language will be sanctioned by them. I leave you to your own reflections on this tirade of abuse. A man sometimes forgets himself, and in the heat of debate uses language that is unguarded and for which he is sorry; for this he is forgiven. You, on the contrary, in the quiet of your study, embody in an official report to the President, language which no *gentleman* would make use of under any circumstances, on a mere assumption of facts.

Now, sir, would it not have been as creditable to the standing of the Attorney General to furnish the President with some *facts*, and report, in substance, as follows:—

1st. The express words of our treaty with Mexico require us to protect all legal and honest titles in California; as also "in said territories, property of every kind now belonging to Mexicans not established there, shall be inviolably respected."

2d. In ascertaining the validity of titles held by citizens of Mexico and other residents in California at the time of its cession, we must first inquire as to the laws of that country, relating not only to the land titles, but also to mining titles.

3d. For this purpose Commissioners were appointed under authority of Congress; and among other claims brought before

them was this one of Andres Castillero to the New Almaden Quicksilver Mine, and three thousand varas of land in every direction from its mouth, upon a denouncement with all the forms of law before the Alcalde of San Jose.

4th. The Commissioners investigated the claim, and pronounced the same to be valid.

5th. The mine and land under this claim have been in possession of Castillero, and his successors in the title, *without interruption* since December 1845.

6th. The owners of the same have expended large sums of money thereon before and since the cession of California to the United States, and have developed one of the most beneficial products of that rich mineral State; by means of which the gold and silver miners have been much benefitted, and to whom the stoppage of the working of this mine is a direct injury, as set forth in the preamble and resolution of the Legislature of California.

7th. No laws of Spain, and, through her, of Mexico, are more distinct and clear in their language than those relating to mines and minerals; they form a distinct code; define the rights of miners, also of the *denouncers* of mines as distinct from the *owners* of the soil under which the mine is situated, if the denouncer be not the owner himself; and these laws have been and are, also, in substance, now in force in almost every mining district in California, and in the language of the preamble to the resolution now reported on, "the miner on public lands has been protected and maintained in his right of property in his mine by the laws of this State."

8th. An appeal has been taken by the District Attorney from the decision of the Land Commissioners, but as in every case decided by them in favor of the claimant, the United States has taken an appeal, the mere fact of such an appeal being taken in this case does not of itself carry any weight with it. *No* decision has yet been made on that appeal.

9th. In view of the above facts, and that it is asserted by the Legislature of the State, that "the stoppage of the New Almaden quicksilver mine, situated in Santa Clara County, by injunction at the suit of the United States, has been productive of great injury to the people of California, and is the exercise of a power dangerous to the general mining interests of the State," I think this is a case in which the Chief Executive may exercise his discretion, and it will not in the least interfere with the course of justice, if the President direct the counsel of the United States to withdraw all opposition to the motion of the owners of the mine for a "dismissal of the injunction;" particularly as such act will have no effect whatever on the final decision as to the question of *title*, which must be presumed to be in the present owners until the final decision by the Supreme Court of the United States is pronounced against them.

If there is any of the above propositions that I have assumed, that is incorrect, I have yet to learn it; certainly, no other deduction can be arrived at from the examination of all the papers that have been brought forward in this case; and such is the assumption by the Legislature of California from the facts as they have been developed before the Land Commissioners and the District Court.

My method of stating the case, for the *information* of the President, differs somewhat from yours, in that, mine is a mere statement of *facts* without comments; yours of *comments* without facts, in some cases even in the face of facts. This is doubtless an innovation on the practice of the office of the Attorney-General of the United States, which, it appears, arrives at conclusions on *ex-parte* statements, acknowledged, however, "not to be proof, to be sure;" but this innovation might, from its novelty, command attention from the President, who, no doubt, would like the opportunity of knowing *something* of the matter

referred to him by Legislative resolution, especially as the letter from the Senators and Representatives in Congress for California accompanying that resolution, expresses the reliance of the writers "on your (his) exalted character for integrity, and your (his) strong love of justice," and their confidence "that you (he) will do whatever is safest, wisest, and best."

You assume a great liberality in professing to anticipate the gift of this mine to American citizens; (after the present owners are ousted;) but, although you may "lawfully think of the poor," I fear the *thought* is all of this mine that *they* will get: you will "shake the superflux" to others, who have already used the United States Government, through yourself, in prosecuting this claim in the name of the Government for their own clients. Do you yourself believe for one moment that the United States, or the public, is to be benefitted to the extent of one dollar, if the claim of Castillero and his associates is set aside? Is not the disposition of this mine (not as it was when it was discovered in 1845, and in its crude beginning; but rich in development, in its outlays for scientific experiments, colossal works and finished machinery) a foregone conclusion? Some of your readers, unconscious of the actors behind the scenes, might fancy *they* might be *the* American citizens that will not be excluded from the "bounty of their own Government," and that a general scramble will be allowed for its rich pickings; but it will be as well to tell them not to indulge in such pleasant anticipations; after the tree has been well nurtured and bears good fruit, the shaking of the same will be at the expense of the public, but the gathering is reserved for the particular friends of the Administration. *Your* interest is to have such a decision on this *test* suit as will place at the disposal of the Federal Government every mine in California that is worth proceeding against; *that* Government which, through its legal adviser, recognizes no rights to

mines, as such; no denouncements; no local laws as applicable to mines; nothing as due to the discoverer, explorer, and worker of mines except that of investing their time, labor, and money in making the same valuable; when all is to be at the mercy of the Federal Government or its Attorney General. If this is not "a great grievance and an outrageous violation of free government" when "the right of property in the mineral lands of this State (California) is held by the people at the will of the Federal power," and is not "the exercise of a power dangerous to the general mining interests of the State," I confess I know not what is. Let the Legislature of California well understand by this decision that the President and the Attorney General of the United States concur in the opinion that all mines opened and worked on the Government Land belong to the Federal Government, and are at the disposal of the Chief Executive; let them know this before more capital is expended on them, more labor bestowed in openings, in placing the necessary works and machinery thereon; in fine, let the Legislature fully understand that the Federal Government can obtain an "injunction against waste" on any mine in that State, by merely asserting, in a complaint before the Circuit Court, that the owner thereof is the United States; and *that* injunction can easily be made permanent. The owners of the New Almaden Mine have, in their continued resistance, for their own preservation, to this Executive doctrine, conferred a benefit on the mining community West and East of the Sierra Nevada, by causing you to declare officially that such is the doctrine, and, looking at the present suit, such will be the practice of the Federal Government as long as you are looked to as its legal exponent.

You have, throughout this report, asserted the title of these claimants to be false; you state that the District Attorney for the Northern District of California has charged that "Castillero's

claim is false, fraudulent, and ante-dated;" you yourself charge that these claimants know it to be fraudulent; you feel convinced that the President, under your instructions, "is bound to assume that the title is fraudulent." Why, then, in the name of Justice, do you not avail yourself of the provisions of the Act of Congress which makes the prosecution of such a claim a criminal offense? You have cited this Act in your report, and now the position in which you are placed, is this: you either believe your own assertions, or you do not; if the former, you have been recreant to your duty and false to your oath of office, by not prosecuting these claimants: if, on the contrary, you have taken advantage of your official position, and made to the President, and through him, to the Public, assertions which you know to be false, the deserved contempt of every right-minded member of the community will be fastened on you; it is for yourself to show, by your acts, what your belief is. These claimants are not ideal; they do not assume the names of John Doe and Richard Roe; most of them are residents of the United States, many of them in California; and the most prominent has been, during the last few months, living in Washington, not in disguise, and in holes and corners, but in such position, as, if reports be true, to have been brought as the open and avowed prosecutor of this (so called) fraudulent claim, into contact with you; none of them has attempted to go beyond the reach of District Attorneys or U. S. Marshals, and there is therefore no excuse for your not doing your duty. The result of such a prosecution would do more to satisfy the public of the truth or falsity of your charges than the mere repetition of them so constantly made in your report. May not the *allegation* of fraud so freely made, be in itself a *fraud?* Again, if you believe this to be a fraud, why not let a commission be issued to examine the archives in the city of Mexico, where you would discover it, as you did in

the Limantour claim, if it existed? It is notorious that these archives furnished you with the best evidence of that fraudulent claim : it has been shown to the satisfaction of disinterested persons, and asserted by the counsel of the claimants, "that in relation to all titles to land in the United States, in territory derived from Mexico, not a single false or forged document purporting to be an official document of the Supreme Government has been found in the archives of Mexico." Instead of this, you have taken every means in the power of the Government to prevent the charge of falsity being examined : as this will scarcely be credited by persons not in the secrets of your office, I will recapitulate a few facts bearing on it. On an application being made by the claimants, to the U. S. District Court at San Francisco, to issue a commission to examine witnesses in the city of Mexico in relation to all matters connected with this title, it was denied on the objection of the District Attorney, that the Court had no such power given it under the Act of Congress of 1851. When application was subsequently made to Congress to remedy the supposed defect in the law, this also was successfully opposed by yourself on the ground that "its success can only be injurious to the interests of the Government;" the language used by you to the chairmen of the Judiciary committees, enclosing to each a copy of the District Attorney's letter, being, "I concur with him in the opinion that the said Act should not be changed; it cannot now be done without seriously hazarding the interests of the United States in two or three remaining cases;" and the chairmen of the committees took your view of it, they also thought that as the interests of the United States would be promoted by the suppression of facts, they must obey your behests. Another subsequent application by these claimants that the United States Government would authorize its Minister in Mexico; the American Consul; or such other public officer as the Pres-

ident might select; or two or three citizens of the United States, to be named by the President, as Commissioners; to make examination and proof of the documents that could not be removed from the archives of Mexico, and further, to take the testimony of witnesses as to the truth or falsity of these several documents, has also been denied, although these claimants have proffered to pay all expenses attending such examination. If this is not setting aside the plainest dictates of justice, I would thankfully know how it is characterized in your office; these claimants wish, and ask for, the fullest investigation into their title; you are told where that can best be made by United States functionaries, or commissioners appointed by the President, and you deny those several applications for this purpose; and upon what plea? Will it be believed that the answer to this, given in the middle of the 19th century, is "that evidence must be suppressed;" that "the interests of the United States would be seriously hazarded" if the truth were given in evidence. When the Attorney General of the United States, and his District Attorney, fear that the truth will damage their case, it is as good an acknowledgement of the injustice of their cause as any honest man would look for, and that you yourself are conscious that the reckless assertions so unsparingly used by you as to these titles being fraudulent, are in great danger of being thrown back upon yourself, if you fail, by the aid of all the power of the Administration, in preventing the truth being given in evidence. I leave it to you, Sir, to justify to the people of these United States and the civilized world at large, if you can, the outrageous doctrine that the suppression of truth by a powerful government, in a prosecution against private individuals, is one of the *duties* of an Administration of which you are the chief legal adviser; a doctrine that, in my humble opinion will be repudiated by every American who is not bound hand and foot to carry out every dictum that may be pronounced

as emanating from the Chief Executive and his Cabinet; a doctrine that it is to be hoped can only be enforced here as long as you are its Attorney General. Your successor will doubtless consider it is the bounden interest, as well as the *duty* of the State to lend its aid in obtaining testimony to establish the *right*, even if, in so doing, such testimony may operate against itself in any suit before the courts: that national honor is of more importance than all the wealth of all the world; that *principle* is a safer guide than *expediency;* that Government has its obligations as well as its privileges, and that one of the greatest of these is the dispensation of *justice* to all who apply to its courts for redress, without reference to nationality or prejudice of any kind; and that security of property, even under a *partial* Executive is, next to that of life, one of the greatest boons that a government can confer upon its citizens.

I am, Sir,

Your Obedient Servant,

A CALIFORNIA PIONEER.